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ABSTRACT

This report on the administration and operation of Title I of Public Law 874 is a descriptive and evaluative study of the Federal Impact Aid Program. Chapter one discusses the history and basic elements of the program, and the plan of study used in the evaluation. The methodology of the study, which includes the characteristics and validity of the Economic Impact Model in comparison with more conventional models, is examined in chapter two. Chapter three considers evidence for reducing or revising the Impact Aid Program with respect to the following issues: the definition of federal property, and strategies for mitigating adverse effects of federal activities on local educational agencies; intergovernmental tax immunities; the government's responsibility in the attainment of adequate levels of education in federal programs; the net fiscal burden placed upon local education agencies by federal activities; and the criteria for determining eligibility of local education agencies for compensatory payments. The last two chapters include the report's findings and legislative recommendations. Sixteen appendices provide supplementary and peripheral information related to the Federal Impact Aid Program and to this report. (JCD)

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A REPORT ON THE
ADMINISTRATION AND OPERATION OF
TITLE I OF PUBLIC LAW 874,
EIGHTY-FIRST CONGRESS

BY THE

COMMISSION ON THE REVIEW

OF THE

FEDERAL IMPACT AID PROGRAM

Submitted
to the
PRESIDENT
and
to the
CONGRESS

September 1, 1981

UD021801

Commission
on the Review of the
Federal Impact Aid Program

1832 M Street, N.W. · Suite 837
Washington, D.C. 20036

September 1, 1981

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

We submit the report of the Commission on the Review of the Federal Impact Aid Program with our recommendations for changes in the Impact Aid Program as required by section 1015 of Public Law 95-561.

Our recommendations reflect the views of a majority of the members of the Commission. Two Commissioners have submitted separate views which are included in this report.

We believe that our recommendations, if adopted, would strengthen and simplify the Impact Aid Program and make the program more nearly equitable in achieving its intended purposes.

The Impact Aid Program was originally authorized as a means of mitigating the adverse effects of Federal activities on the financial ability of local educational agencies to carry out their functions--to compensate them for the burden placed upon them by Federal immunity from State and local taxation and by educating federally-connected children.

The program was designed to operate and does operate under the laws of the States regarding the financing and governance of local educational agencies. The program carries with it no Federal education policy. It is intended to preserve local control over education by compensating them for local revenues.

In opposition to the program, the following contentions were advanced:

(1) the Impact Aid Program overpays local educational agencies, in that entitlements are greater than the financial burden placed upon them by Federal activities;

(2) in most instances the economic benefits of Federal activities to localities compensate for the burden placed upon them by those activities; and

(3) if those benefits are not available to local educational agencies, it is the result of ineffective State and local educational financing systems.

The Congress did not place the question of the adequacy of school finance laws within the scope of our mandate.

Regarding the contentions that the entitlements overcompensate for Federal burden and the economic benefits from Federal activities, the Commission conducted hearings and research to determine their validity. The original premises upon which the program was based were examined:

(1) that Federal immunity from State and local taxation deprives local educational agencies of necessary revenues;

(2) that, under the laws of the States, the owners and users of real property have an obligation to support public education; and

(3) that the Federal Government should assist local educational agencies in providing education for federally-connected children.

The law regarding Federal immunity from State and local taxation, under the Supremacy Clause of the Constitution, has been reviewed and, even though finer distinctions have been drawn, allowing more taxation of private interests in Federal property, the doctrine of immunity still stands and deprives local educational agencies of revenues. A factor in limiting the broad coverage of that doctrine has been a recognition, on the part of the courts, that Federal immunity must be balanced against the need of local governments for revenues. Even though there is a considerable body of opinion that such balancing should be carried out through the political branches of the Government, the Supreme Court has recently decided that there is a limit on the power of the Federal Government when the federal system of government is threatened by the exercise of otherwise valid powers of the National Government. When that limit has been exceeded and the Congress has not protected the interests of the States and their subdivisions, the courts have imposed the limitation. The Impact Aid Program is one means by which the Congress may protect the States and their subdivisions from the otherwise valid exercise of power by the Federal Government.

There have been significant changes in State laws regarding school finance, with a trend toward a greater share of the cost of education and less reliance upon real property taxes for the support of education. These changes, however, have not been so substantial as to change greatly the patterns in school finance into which Impact Aid was designed to fit or as to merit substantial alteration of the program as it relates to the financing of public schools.

The Federal Government has a long-standing interest in the education of federally-connected children and has, over the years, recognized an obligation for their education. On the basis of that interest and obligation, the Federal Government should assist local governments which provide education for those children, in that the cost of their education constitutes a burden on those local educational agencies.

There is no evidence to support the contention that there are net fiscal benefits to local educational agencies arising from Federal activities. On the contrary, in the case studies conducted by the Commission, the net fiscal burden is generally commensurate with the amounts to which the local educational agencies studied are entitled under section 3 of Public Law 874.

From this evidence the Commission has concluded that under the federal system of government, there is an obligation on the part of the Federal Government to mitigate the adverse effects of Federal activities on local educational agencies and that, even though other means of doing so may be possible, a program similar to that authorized by Public Law 874 is necessary.

In these troubled times when drastic changes are being made in Federal policy, too often those making that policy lose sight of the basic obligation of the Government to the people and act without knowing the consequences of their actions. We hope that this report will give them sufficient information to act wisely with respect to the Impact Aid Program.

Yours respectfully,

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EXECUTIVE SUMMARY

Creation of the Commission

When substantial reductions in funds for the Impact Aid Program were considered by the Ninety-fifth Congress, it was determined that a review and evaluation of the Impact Aid Program was necessary. The Commission on the Review of the Federal Impact Aid Program was established pursuant to section 1015 of the Education Amendments of 1978 (Public Law 95-561) which was enacted November 1, 1978. The law provided for a Commission, having ten members appointed by the President, charged with the mandate that it review and evaluate the administration and operation of the program authorized by Public Law 874, Eighty-first Congress, commonly known as the "Impact Aid Program."

The Impact Aid Program was established in 1950 and payments were made through that program to local educational agencies for fiscal year 1951 and each fiscal year thereafter. Those payments amounted to $28 million in 1951 and have grown to approximately $780 million in fiscal year 1980.

The payments are made to those local educational agencies which, under the law, are so affected by Federal activities as to have had a burden placed on them thereby which merits compensation. Two kinds of burden have been recognized by the law: (1) a revenue burden arising from the fact that Federal property in the school districts of such agencies is not subject to real property taxes, and (2) a service burden arising from the fact that those agencies provide educational services for federally-connected children without having a tax base, with respect to those children, adequate to provide them with these services.

The Impact Aid Program is the only non-categorical program of payments to local educational agencies. All other Federal elementary and secondary education programs are designed and implemented to carry out a Federal policy affecting education; and, therefore, have a Federal purpose for which Federal funds are expended. The Impact Aid Program is an administratively simple program of payments designed to assist local educational agencies in carrying out local policies which would, but for those payments, be impaired by loss of revenue and the costs incurred as the result of Federal activities.

Specifically included in the Commission's mandate was the requirement that the review and evaluation emphasize a consideration of: (1) the equity of the present funding structure of Public Law 874; (2) the relative benefit of assistance for Impact Aid under Public Law 874 in view of the increasing costs of the program and the limitation on the availability of funds; and (3) the ways in which districts of local educational agencies which are federally-impacted can best be assisted in meeting their educational needs.

Section 1015 requires that the Commission prepare and submit to the President and the Congress a report on its review and evaluation, together with such recommendations as the Commission deems appropriate. Such recommendations include recommendations for legislation relating to the authorization for, and funding of, the Impact Aid Program.

Meetings of the Commission. On August 15, 1979, the President appointed the ten members and a chairman for the Commission. These ten members were to include persons who are not fulltime employees of the Federal Government and who are knowledgeable about the problems of local educational agencies in impacted areas, including State and local officials, authorities on education, and the general public. An executive director was designated with authority to prepare for the First Meeting of the Commission which the Chairman scheduled for September 28 and 29, 1979. This direction included the development of a proposed Plan of Study.

The staff developed a proposed Plan of Study which had two emphases: (1) an in-house research capability which was to prepare for making recommendations through a series of special studies on each of the issues likely to be raised, and (2) a limited number of hearings designed to elicit the views of interested parties and gather evidence upon which recommendations could be based.

The general rationale of the Plan of Study was that the Commission would hold hearings and the research staff would develop policy papers based on special studies of the issues; the Commission then would develop draft recommendations with a view toward developing a consensus on those recommendations or, at least, narrowing the issues to those in actual disagreement so they could be resolved in a deliberate and judicious manner. There was some variance from this Plan of Study; however, its principles were followed in the development of the draft report, adopted in January, 1981.

The Commission held ten business meetings and ten hearings--five of which were planned to coincide--as well as conducted extensive in-house research. All meetings and hearings were open to the public, and adequate notification of each was given through the Federal Register.

At the First Meeting, held in Washington, D.C., on September 28 and 29, 1979, the Commission considered the proposed Plan of Study, hired permanent staff, adopted a tentative budget, and agreed to meet in Chicago, Illinois, on December 14, 1979, to consider a revised Plan of

Study. Staff was directed to develop a revised Plan of Study with greater emphasis on public hearings and site visits, to make a report on proposed Impact Aid reforms, and to survey statistical data available to the Commission. Authority was given to hire additional staff necessary to prepare for the Second Meeting.

Additional research staff entered upon duty November 4, 1979. This staff was chosen purposely with no background in Impact Aid in order that the study remain as objective and unprejudiced as possible. The new staff prepared a revised Plan of Study in accordance with the directions of the Commission. At the Second Meeting on December 14, 1979, the Commission considered, modified, and adopted the revised Plan of Study.

At the Seventh Meeting in Washington, D.C., on September 18 and 19, 1980, the Commission began adoption of preliminary recommendations, a process that continued through its Eighth Meeting in Washington, D.C., on November 6 and 7, 1980. At this November meeting, the Executive Director reported that due to political events, funding would be insufficient to complete several special studies and other work as planned. The Commission considered but deferred adoption of a report until its Ninth Meeting, when the details of the Commission's budget situation could be ascertained.

On January 22, 1981, the staff of the Commission was notified that the Commission would suffer a reduction in expenses of more than 60 percent below its then current operating level--in spite of the fact that both the authorizing law and the continuing resolution provided that the current level should be maintained. This was particularly difficult since the Commission had not contracted out any of the study and had relied upon an adequate, low-paid staff of temporary Federal employees to conduct the study. As a result, more than two-thirds of the staff was dismissed and the Commission turned to concluding its affairs.

Conclusion of the Commission. The Commission held its Ninth Meeting on January 29 and 30, 1981, at which the draft final report was adopted, in substance, pending its final approval at the Tenth Meeting. The report now contained in large part the bulk of the Commission's research and recommendations. The Commission also adopted a resolution regarding the manner in which it would conclude its affairs:

1) staff was directed to submit a copy of the draft report to the Education Department and the Office of Management and Budget for their comments, with courtesy copies submitted to appropriate congressional committee staff;

2) a meeting was scheduled for July 16 and 17, 1981, to consider any comments received and to adopt the final report;

3) procedures for selecting a subcommittee of the Commission for presentation to the Congress and the public were determined; and

4) staff was directed to determine whether any congressional committees desired a hearing.

For the remainder of its time, the Commission was available to answer any requests by the Congress, including preparations for any further hearings, if necessary.

The Plan of Study

The Plan of Study, as adopted by the Commission on December 14, 1979, was to be conducted in the context of three major areas that fell within and paralleled the mandates given the Commission by the Congress:

1) The Equity of the Present Funding Structure. Special studies in this area were to address the questions of how the Federal Government burdens localities and whether compensation under Impact Aid for that burden is adequate and fairly distributed.

2) The Relative Benefit of Impact Aid Assistance. This mandate was puzzling because the law did not state what the Commission was to compare in order to reach the "relative benefit" of Impact Aid. For example, were the benefits arising from assistance to local educational agencies serving children residing on Indian lands to be compared with the benefits arising from those agencies serving children residing in low-rent public housing? If so, whose benefit was the Commission to consider--the Federal Government's? The local educational agency's? The children's? It was more likely a comparison of Impact Aid to other programs with similar benefits was intended.

3) The Best Means of Assisting Federally Impacted School Districts Meet Educational Needs. Issues under this mandate were considered in light of the propriety of basing Impact Aid payments on the educational needs of federally-connected children rather than the amount it is assumed a locality would have contributed for the education of a federally-connected child if tax revenues had not been reduced by Federal activities.

A series of special studies were planned to cover these three mandates. These special studies fell into three broad categories: school finance, educational needs, and economic impact. For example, a school finance study under the equity issue would be "State and local sources of revenue"; an educational needs study under equity would be "compliance with Federal laws and regulations" (such as mandated bilingual and handicapped children's education); and an economic impact issue under equity would be "eligibility." These special studies would constitute the in-house research of the Commission.

In addition, ten hearings and five site visits were planned and conducted. The ten hearings covered all regions of the United States and included subjects of special interest: for example, a hearing at Window Rock, Arizona, was specifically to hear Indian concerns. For each hearing, superintendents of local educational agencies, national and regional associations, Federal agencies, and all interested parties were invited to testify. The site visits provided the Commission an opportunity to view firsthand federally-affected districts that receive Impact Aid. These hearings and site visits constituted the second emphasis of the Plan of Study.

Variance from the Plan of Study

Interim Report. On March 31, 1980, the Commission received a request from the Chairman of the Senate Appropriations Committee to submit an interim report to the Congress. On April 1, 1980, the Commission received a similar request from the Chairman of the House Education and Labor Committee.

The Commission, under the Plan of Study, had not scheduled itself to make policy decisions at that time nor even to have a meeting at which such a report could be adcpted. However, under the Plan of Study, a hearing had been scheduled for April 22, 1980, in San Francisco; a call for a coinciding business meeting was immediately placed in the Federal Register at the direction of the Commission's Chairman. Uncertain whether a decision regarding policy could be reached in such a short time, a meeting was also called to coincide with the Commission's next hearing, to be held in Montgomery, Alabama, on May 1, 1980.

At the Third Meeting on April 22, 1980, the Commission adopted an Interim Report (with Supplemental Documentation to follow) which, although it did not contain recommendations, contained general policy findings that would constitute guidelines for recommendations. At the Fourth Meeting on May 1, 1980, the Supplemental Documentation was adopted.

Economic Impact Study. The original Plan of Study did not anticipate that an economic impact study could be conducted so thoroughly, nor that an economic impact model could be developed so quickly that was theoretically sound when applied on a case study basis. The study involved examining the contention that there is a net economic benefit to localities from Federal activities. This examination took two forms: (1) a review of studies made by the Defense Department on the economic effects of base closings; and (2) case studies on the effect of Federal activities on the finances of local educational agencies.

The Department of Defense studies indicated that, in the long run, communities are economically better off after a base closing than they are with the base in operation. From this it can be concluded that there is no net economic benefit to those communities from Federal activities.

The Commission's economic impact model measured the effects of military installations on the finances of local educational agencies, compared with what would have been the case under alternative use of the installations' real property, in four case studies. In each instance, the result was that there was a net fiscal burden on the local educational agency resulting from the Federal activity; and in three of four cases--Chambersburg, Pennsylvania, Bellevue, Nebraska, and Douglas, South Dakota--the amount of the net burden was commensurate with the Impact Aid entitlement for the affected local educational agency in fiscal year 1979. In one case--Pensacola, Florida--the Impact Aid entitlement exceeded the net fiscal burden because, in Florida, there are high State payments to local educational agencies--which means the State takes on part of the Federal burden.

Time constraints did not permit a thorough use of this model, however, and budgetary limitations prevented the development of an aggregate study model.

Again, time constraints and budgetary considerations required a decision to complete the Commission's work with regard to the traditional Impact Aid Program, and not to take on any new areas unless sufficient funds could be found. On the basis of studies completed by January 9, 1981, the Commission found that sufficient information had been gathered and analyses finished to merit the submission of a report on the areas of the study sufficiently completed as to support recommendations. The areas of the study which were not so complete are as follows:

1) a comparision of the relative benefits of Title I of the Elementary and Secondary Education Act of 1965 with those of payments based on entitlements under the Impact Aid Program which arise from low-rent public housing property;

2) the study of the impact of Federal policies and activities (other than those which are connected with Federal property) on local educational agencies;

3) the relationship between Impact Aid payments and State programs of financing public education; and

4) the disaster relief provisions of existing law.

Most of these questions are dealt with by recommendations to the Congress that it continue to examine these areas.

Review and Evaluation by the Commission

At its beginning, the Commission was mindful that prior to 1950, the Federal Government had no established policy for educating dependents of its employees. Instead, various Federal agencies made ad hoc attempts to educate their employees' children. In many cases, federally-connected children were afforded no opportunity to attend public school at all.

The War Department was the first Federal agency to recognize the need for public schools for its employees and to apprise the Congress of that need. In 1821, the Congress enacted into law regulations providing for a system of public schools for military dependents; this system remained in effect, with minor changes, for the next 100 years.

By the 1930's, nearly every Federal agency provided for dependents of its employees in its own manner, performing similar services with considerable overlapping. The need for consolidation of administrative authority over education activities serving the same purpose was evident.

With the advent of World War II and the vast number of families moving to defense production and military installations, the Congress provided for federally-owned "war housing" and schools with passage of the Lanham Act in 1940, and subsequent amendments to that Act.

In the early years following the war, the need was recognized for continued funding of those schools that had received assistance during the war. Legislation passed in 1946 recognized that large numbers of children living on tax-free government reservations constituted a continuing problem for some local educational agencies for which the Federal Government had some responsibility.

Up to and including the Eighty-first Congress, many comprehensive policy proposals were introduced that authorized payments to local educational agencies to provide education for federally-connected children. The House Committee on Education and Labor decided to study the matter prior to approving any of the proposed permanent legislation. The Committee held hearings and conducted field investigations at which over 42 States and nearly three-fourths of federally-affected districts were represented.

The Committee found that "[w]ithout continued Federal help, more than 1.8 million children in these federally-affected areas [would] not receive normal school services....The U.S. has become an industrialist, landlord, or a businessman in many communities" by owning and using land within those communities. However, since the land is tax-exempt, the Federal Government has not accepted "the responsibility of the normal citizen in a community" to meet its financial obligation to support public schools under the existing school finance laws of the States.

With the outbreak of the Korean conflict in June, 1950, and the resultant military buildup, the Congress enacted two bills--Public Law 815 (on September 23) and Public Law 874 (September 30)--as a device for Federal compliance with the obligation of landowners and employers to support public education.

Evidence Gathered through the Commission's Hearings. During the course of its ten hearings, the Commission heard from 412 witnesses representing the 50 States and Guam, many Federal departments and agencies, national and regional associations, and interested persons. Official transcripts of those hearings comprise over 3,000 pages. Written statements submitted for the record total nearly the same amount.

The task of summarizing that testimony was not a small one. Much of the information presented by local educational agencies regarding the nature and extent of the Federal presence in their communities was irreducible and not generalized easily without sacrificing accuracy. However, the scope and the "sense" of testimony presented can be organized around the following:

1) views on the proposal of the Education Department to reduce Impact Aid in fiscal year 1981;

2) the tax effort made by local educational agencies to finance their operations, including costs imposed by the Federal Government;

3) the nature and extent of the burden imposed by the Federal presence;

4) additional Federal impacts for which the Federal Government does not compensate local educational agencies;

5) the need for other, possibly more comprehensive payments in-lieu of taxes to replace or supplement Impact Aid;

6) revenues lost because alternative use cannot be made of the federally-owned property;

7) the economic impact of the Federal presence;

8) the Federal obligation to compensate for the impact of the Federal presence as currently covered by Public Law 874; and

9) the special educational needs of federally-connected children.

In summary, local educational agencies expressed disbelief and grave concern over the Administration's proposal to reduce Impact Aid payments, especially in light of the fact that it is such an administratively efficient and well-justified program. The Commission was told virtually no loss is absorbed easily, and that many localities were already taxing at their State legal limit. Results if such a reduction were to occur ranged from laying off teachers--thus increasing class size--school closure, and reducing programs and services to refusing to educate federally-connected children or changing district boundaries so as to exclude a Federal installation.

Moreover, the Federal Government imposes burdens--beyond the traditional "revenue" and "service" burdens--that are not covered under Public Law 874, such as the cost of complying with such mandates as the education of all handicapped children and the provision of bilingual education. There are costs involved with transportation in sparsely populated areas, and in transporting special-needs children to facilities that can accommodate them. A military installation has greater impact beyond the mere presence of federally-connected children, such as the costs of diagnostic testing, special teachers, and program coordinators, even more necessary for the child whose family is transferred often. Local educational agencies testified that the presence of undocumented aliens and refugees is the direct result of Federal policy. Properties surrounding Federal installations are highly restricted in their use and yield less tax revenue. Local educational agencies testified as to these and other "hidden" burdens.

Local educational agencies testified they would prefer a more comprehensive payment in-lieu of taxes program, but such a concept is difficult to visualize beyond the level of payments to local educational agency--much less so on a national level. Nearly all local educational agencies stressed the (and used the term) "obligation" that the Federal Government has to compensate for burdens it imposes. In addition, military dependents, Indian children, refugees and illegal aliens, and children from low-rent public housing all have special educational needs that cost more. All local educational agencies would prefer to be able to levy taxes on federally-owned land. At best, most local educational agencies could only provide estimates as to how much revenue would accrue to them if alternative use were made of the land.

Though not within the Commission's mandate for review and evaluation, local educational agencies also testified regarding Public Law 815. Section 10 of that law provides "for the construction of and repair of urgently needed school facilities to house children residing on Federal properties..." It should be noted that section 10 of Public Law 815 is permanent legislation and is only reviewable through the appropriations process. Since being enacted in 1950, up until 1967, Public Law 815 had generally been funded fully. Since then, however, appropriations have been insufficient to satisfy all entitlements. Fort Bragg in North Carolina, alone, is $20 million behind in repairs and construction; $200 million is estimated to be necessary for repairs and construction for all schools on Federal property.

Local educational agencies reiterated many times that they must use Public Law 874 funds for construction instead of as general operating revenues. Representatives of school districts, particularly those with military bases within their boundaries or high Indian enrollment, have urged the Commission recommend that Public Law 815 be funded fully.

School districts that experience rapid increases in enrollment due to transfer of military employees are hard-pressed to find space to accommodate students. Many present section 10 buildings were built in the 1950's and 1960's, and this now poses numerous problems:

1) they need extensive repairs;

2) they are lacking in space and modern facilities;

3) there is an increase in the number of families being placed in on-base housing; and

4) children are in excess of the rated capacity of these buildings, leading to (a) split schooling shifts of reduced hours (morning/afternoon); and (b) requiring locating students in World War II wooden, dilapidated, inferior buildings.

The only witness to testify in favor of the Administration's proposal for reducing the Impact Aid Program was the Education Department, arguing that Impact Aid should be cut because it overcompensates localities that enjoy a net economic benefit from Federal installations. Based on the argument that communities actively seek Federal installations, the Education Department concluded Federal activities must be considered an economic plus. Further, the Education Department argued that if local educational agencies have not been able to tax the influx of wealth such as additional payroll and corporate profits flowing from Federal activities, it is because of ineffective State and local education financing.

systems and not the responsibility of the Federal Government. In addition, the Government must consider budgetary constraints and set priorities among education programs--Impact Aid not being high on the list. None of this evidence was borne out, either through the hearings or the Commission's research.

In addition, the Commission heard testimony from the Departments of State, Defense, and Housing and Urban Development, as well as received evidence from the Department of Justice. This testimony and evidence indicated that the Department of Education was the only Department in the Executive Branch which favors reductions in the Impact Aid Program. Morever, there is substantial evidence to show that the Departments of Education and Housing and Urban Development were in disagreement about whether low-rent public housing property should be included as "Federal property" in the Impact Aid Program. In addition, there is evidence that while the Education Department was recommending cuts in Impact Aid, other officials were promising Impact Aid for refugees.

Research of the Commission Staff. The Commission operated under the mandate given it by the Congress; specifically, that it study: (1) the equity of the present funding structure; (2) the relative benefit of Impact Aid assistance; and (3) the best means of assisting federally-impacted local educational agencies to meet educational needs.

The Plan of Study provided that each of the questions likely to be raised during the course of the Commission's work would be arranged around these issues and would be the subject of a special study. These special studies would then form the basis for recommendations. Evidence for use in those studies would come through in-house research and the series of hearings.

Underlying the special studies and the evidence gathered through the hearings were fundamental questions regarding the Impact Aid Program that, when answered, led to the Commission's policy regarding the program:

1) What are the historical and legal principles upon which the program has been based?

2) How does the program fit into the general scheme for financing public schools and how should federally-affected schools be financed in that scheme?

3) Is there a net fiscal burden upon local educational agencies resulting from Federal activities? and

4) What are the educational needs of federally-connected children and how should those needs be met?

In seeking the answers to these broad questions and, as a matter of consequence, deducing a basic policy approach toward the Impact Aid Program, it was determined that findings and recommendations could be reached best through answering questions specifically geared toward the Impact Aid Program that have been raised by its supporters and detractors. These basic policy questions were as follows:

1) Should the Impact Aid Program be continued?

2) Should there be basic changes in the Impact Aid Program?

3) How should the term "Federal property" be defined?

4) What is the obligation of the Federal Government with respect to the education of children connected with Federal property?

5) Should local educational agencies educating children in attendance at public schools by reason of Federal law or activities be compensated therefor?

6) Which local educational agencies should be eligible for Impact Aid payments?

7) What should be the amount of compensation?

8) How should funds be allocated among local educational agencies when appropriations are insufficient to satisfy all entitlements?

9) Should the States take Impact Aid payments into consideration in their State aid programs?

All of these issues were raised in research and through the hearings. At the Commission's Ninth Meeting on January 29 and 30, 1981, final findings and recommendations regarding each of these questions were adopted in substance, pending final approval.

In opposition to the program, the following contentions were advanced:

(1) the Impact Aid Program overpays local educational agencies, in that entitlements are greater than the financial burden placed upon them by Federal activities;

(2) in most instances the economic benefits of Federal activities to localities compensate for the burden placed upon them by those activities; and

(3) if those benefits are not available to local educational agencies, it is the result of ineffective State and local educational financing systems.

Congress did not place the question of the adequacy of school finance laws within the scope of our mandate.

Regarding the contentions that the entitlements overcompensate for Federal burden and the economic benefits from Federal activities, the Commission conducted hearings and research to determine their validity. The original premises upon which the program was based were examined:

(1) that Federal immunity from State and local taxation deprives local educational agencies of necessary revenues;

(2) that, under the laws of the States, the owners and users of real property have an obligation to support public education; and

(3) that the Federal Government should assist local educational agencies in providing education for federally-connected children.

The law regarding Federal immunity from State and local taxation, under the Supremacy Clause of the Constitution, has been reviewed and, even though finer distinctions have been drawn, allowing more taxation of private interests in Federal property, the doctrine of immunity still stands and deprives local educational agencies of revenues. A factor in limiting the broad coverage of that doctrine has been a recognition, on the part of the courts, that Federal immunity must be balanced against the need of local governments for revenues. Even though there is a considerable body of opinion that such balancing should be carried out through the political branches of the Government, the Supreme Court has recently decided that there is a limit on the power of the Federal Government when the federal system of government is threatened by the exercise of otherwise valid powers of the National Government. When that limit has been exceeded and the Congress has not protected the interests of the States and their subdivisions, the courts have imposed the limitation. The Impact Aid Program is one means by which the Congress may protect the States and their subdivisions from the otherwise valid exercise of power by the Federal Government.

There have been significant changes in State laws regarding school finance, with a trend toward a greater share of the cost of education and less reliance upon real property taxes for the support of education. These changes, however, have not been so substantial as to change greatly the patterns in school finance into which Impact Aid was designed to fit or as to merit substantial alteration of the program as it relates to the financing of public schools.

The Federal Government has a long-standing interest in the education of federally-connected children and has, over the years, recognized an obligation for their education. On the basis of that interest and obligation, the Federal Government should assist local governments which provide education for those children, in that the cost of their education constitutes a burden on those local educational agencies.

There is no evidence to support the contention that there are net fiscal benefits to local educational agencies arising from Federal activities. On the contrary, in the case studies conducted by the Commission, the net fiscal burden is generally commensurate with the amounts to which the local educational agencies studied are entitled under section 3 of Public Law 874.

From this evidence the Commission has concluded that under the federal system of government, there is an obligation on the part of the Federal Government to mitigate the adverse effects of Federal activities on local educational agencies and that, even though other means of doing so may be possible, a program similar to that authorized by Public Law 874 is necessary.

RECOMMENDATIONS OF THE COMMISSION

The Commission on the Review of the Federal Impact Aid Program, under its mandate given by the Congress, is required to review and evaluate the administration and operation of the program authorized by Public Law 874, Eighty-first Congress and report on that review and evaluation to the Congress. That report is to include such recommendations as the Commission deems appropriate. The recommendations of the Commission are as follows:

THE COMMISSION, HAVING GATHERED EVIDENCE ON THE ADMINISTRATION AND OPERATION OF THE IMPACT AID PROGRAM, HAVING EVALUATED AND ASSESSED THAT EVIDENCE, AND HAVING MADE POLICY FINDINGS BASED ON THAT EVIDENCE, MAKES SUCH RECOMMENDATIONS AS DO FOLLOW IN THIS CHAPTER.

I. SHOULD THE IMPACT AID PROGRAM BE CONTINUED?

The Commission recommends --

THAT THE IMPACT AID PROGRAM AUTHORIZED BY PUBLIC LAW 874, EIGHTY-FIRST CONGRESS, BE CONTINUED.

II. SHOULD THERE BE BASIC CHANGES IN THE IMPACT AID PROGRAM?

The Commission recommends --

A. ADEQUATE LEVEL OF EDUCATION FOR FEDERALLY-CONNECTED CHILDREN

(1) THAT PUBLIC LAW 874, EIGHTY-FIRST CONGRESS, BE MODIFIED TO STATE THAT THE FEDERAL GOVERNMENT HAS AN OBLIGATION WITH RESPECT TO THE EDUCATION OF FEDERALLY-CONNECTED CHILDREN; AND

(2) THAT THE OBLIGATION OF THE FEDERAL GOVERNMENT WITH RESPECT TO THE EDUCATION OF FEDERALLY-CONNECTED CHILDREN BE TAKEN INTO CONSIDERATION IN DETERMINING THE AMOUNTS TO WHICH LOCAL EDUCATIONAL AGENCIES ARE ENTITLED UNDER PUBLIC LAW 874 BY USING AN ADEQUATE LEVEL OF EDUCATION AS A STANDARD.*/

B. DETERMINATION OF THE NET FISCAL BURDEN PLACED UPON LOCAL EDUCATIONAL AGENCIES BY FEDERAL ACTIVITIES

(1) THAT THE EDUCATION DEPARTMENT DEVELOP AND USE A MEANS TO DETERMINE, ON AN OBJECTIVE BASIS, THE NET FISCAL BURDEN PLACED UPON LOCAL EDUCATIONAL AGENCIES BY FEDERAL ACTIVITIES; AND

(2) THAT PUBLIC LAW 874 BE MODIFIED SO THAT THE AMOUNTS TO WHICH LOCAL EDUCATIONAL AGENCIES ARE ENTITLED CAN BE ADJUSTED IN CASES WHERE THE NET FISCAL BURDEN PLACED UPON LOCAL EDUCATIONAL AGENCIES VARIES SUBSTANTIALLY FROM THAT TO WHICH THOSE LOCAL EDUCATIONAL AGENCIES WOULD OTHERWISE BE ENTITLED UNDER THAT LAW.

III. HOW SHOULD THE TERM "FEDERAL PROPERTY" BE DEFINED?

The Commission recommends --

THAT THE TERM "FEDERAL PROPERTY" BE DEFINED AS ANY REAL PROPERTY IN ANY STATE WHICH IS NOT SUBJECT TO TAXATION BY THAT STATE OR ANY POLITICAL SUBDIVISION THEREOF BY REASON OF FEDERAL LAW.

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*/ For the purposes of this recommendation, the amount necessary to provide an adequate level of education is defined as "the greater of the State average per-pupil expenditure or the national average per-pupil expenditure."

IV. WHAT IS THE OBLIGATION OF THE FEDERAL GOVERNMENT WITH RESPECT TO THE EDUCATION OF CHILDREN CONNECTED WITH FEDERAL PROPERTY?

The Commission recommends --

(1) THAT THE FEDERAL GOVERNMENT EXPRESSLY RECOGNIZE ITS OBLIGATION TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION FOR CHILDREN RESIDING ON FEDERAL PROPERTY OR RESIDING WITH A PARENT WORKING ON FEDERAL PROPERTY BY AMENDING THE LAW DECLARING SUCH AN OBLIGATION, AND THAT THE FEDERAL GOVERNMENT HAS A SPECIAL OBLIGATION WITH RESPECT TO CHILDREN WHO BOTH RESIDE ON AND RESIDE WITH A PARENT EMPLOYED ON FEDERAL PROPERTY;

(2) THAT

(a) THE CONGRESS RECOGNIZE THAT THE UNITED STATES HAS A SPECIAL AND UNIQUE OBLIGATION WITH RESPECT TO THE EDUCATION OF INDIAN CHILDREN WHICH ARISES FROM TREATIES BETWEEN THE UNITED STATES AND INDIAN TRIBES AND THAT THE IMPACT AID PROGRAM IS ONE OF SEVERAL MEANS BY WHICH THE UNITED STATES CAN, IN PART, SATISFY THAT OBLIGATION;

(b) THE EDUCATION OF INDIAN CHILDREN BE AVAILABLE IN SUCH A FORM AND IN SUCH A MANNER AS WILL ENABLE THEM BOTH TO PERPETUATE THEIR EXISTENCE AS INDIAN PEOPLE AND TO FUNCTION EFFECTIVELY IN THE MAJORITY SOCIETY AND THAT DECISIONS REGARDING THE CONDUCT OF THEIR EDUCATION SHOULD BE MADE BY THEIR PARENTS AND THE TRIBES OF WHICH THEY ARE MEMBERS; AND

(c) TO THE EXTENT THAT THE EDUCATION OF INDIAN CHILDREN IS CARRIED OUT THROUGH LOCAL EDUCATIONAL AGENCIES, AS DETERMINED BY THEIR PARENTS AND THE TRIBES OF WHICH THEY ARE MEMBERS, THESE CHILDREN SHOULD HAVE THE FULL RIGHTS OF CITIZENS UNDER THE EDUCATION LAWS OF THE STATES, AS WELL AS THE BENEFITS WHICH ACCRUE TO THEM UNDER THE TREATIES OF THE UNITED STATES, AND THAT THE IMPACT AID PROGRAM BE SPECIFICALLY DESIGNED TO ACCOMMODATE THOSE RIGHTS AND PROVIDE, IN PART, THOSE BENEFITS;

(3) THAT THE LAW MAKE PROVISIONS FOR INSURING THAT LOCAL EDUCATIONAL AGENCIES WITH HEAVILY IMPACTED SCHOOL DISTRICTS MAINTAIN THEIR LEVEL OF EDUCATION SERVICES;

(4) THAT THE FEDERAL OBLIGATION BE IMPLEMENTED BY PROVIDING THAT LOCAL EDUCATIONAL AGENCIES BE COMPENSATED AT THE RATE OF PAYING HALF THE LOCAL SHARE OF THE COST OF EDUCATION PER CHILD FOR EACH CHILD RESIDING ON FEDERAL PROPERTY AND HALF OF THE LOCAL SHARE FOR THOSE WHOSE PARENTS ARE EMPLOYED THEREON; AND

(5) THAT FEDERALLY-OPERATED SCHOOLS BE MAINTAINED AS THEY PRESENTLY EXIST.

V. SHOULD LOCAL EDUCATIONAL AGENCIES EDUCATING CHILDREN IN ATTENDANCE AT PUBLIC SCHOOLS BY REASON OF FEDERAL LAW OR ACTIVITIES BE COMPENSATED THEREFOR?

The Commission recommends --

(1) THAT

(a) THE LAW BE MODIFIED TO PROVIDE FOR SPECIAL PROVISION FOR PAYMENTS TO LOCAL EDUCATIONAL AGENCIES FOR THE EDUCATION OF CHILDREN OF DOCUMENTED ALIENS (REFUGEES);

(b) SINCE THE FULL SCOPE AND NATURE OF THE PROBLEMS OF PROVIDING THOSE CHILDREN WITH ADEQUATE EDUCATIONAL SERVICES IS NOT YET KNOWN, SUCH MODIFICATION BE IMMEDIATE, BUT OF A TEMPORARY NATURE AND PROVIDE THAT ANY LOCAL EDUCATIONAL AGENCY PROVIDING FREE PUBLIC EDUCATION FOR AT LEAST TEN SUCH CHILDREN DURING THE FIRST TWO YEARS AFTER THEIR ENTRY BE COMPENSATED FOR THE COST OF THAT EDUCATION;

(c) THE CONGRESS EXAMINE THOSE PROBLEMS IN ORDER TO DETERMINE THEIR NATURE AND SCOPE AND DEVELOP A MEANS OF SOLVING THEM;

(2) THAT, SINCE THE LEGAL OBLIGATIONS OF THE STATES WITH RESPECT TO THE EDUCATION OF UNDOCUMENTED ALIENS ARE NOT YET DETERMINED AND THE DEGREE TO WHICH THE PROVISION OF THAT EDUCATION IS A RESPONSIBILITY OF THE STATES HAS NOT YET BEEN DETERMINED AND CAN BE DETERMINED ONLY WITH FURTHER STUDY, THE CONGRESS CONDUCT A THOROUGH EXAMINATION OF THESE PROBLEMS IN ORDER TO DETERMINE THEIR NATURE AND SCOPE AND DEVELOP A MEANS OF SOLVING THEM; AND

(3) THAT, SINCE THE COSTS INCURRED BY LOCAL EDUCATIONAL AGENCIES IN COMPLYING WITH FEDERAL LAWS AND REGULATIONS REGARDING EQUALITY OF EDUCATIONAL OPPORTUNITY INVOLVE MANY ISSUES BEYOND THE SCOPE OF THE MANDATE OF THE COMMISSION, THE CONGRESS EXPLORE THE FEASIBILITY OF CONDUCTING SUCH A STUDY.

VI. WHICH LOCAL EDUCATIONAL AGENCIES SHOULD BE ELIGIBLE FOR IMPACT AID PAYMENTS?

The Commission recommends --

THAT THE ELIGIBLITY REQUIREMENTS BE RETAINED AS THEY EXIST IN CURRENT LAW.

VII. WHAT SHOULD BE THE AMOUNT OF COMPENSATION?

The Commission recommends --

(1) THAT, PENDING THE DEVELOPMENT OF A METHOD OF DETERMINING A MORE PRECISE MEASURE OF THE FEDERAL BURDEN PLACED UPON LOCAL EDUCATIONAL AGENCIES, THE AMOUNT OF COMPENSATION TO WHICH LOCAL EDUCATIONAL AGENCIES ARE ENTITLED BE COMPUTED, WITH RESPECT TO CHILDREN CONNECTED WITH FEDERAL PROPERTY, AS FOLLOWS:

(a) LOCAL EDUCATIONAL AGENCIES WOULD BE COMPENSATED ON THE BASIS OF A "FEDERAL CONTRIBUTION RATE" (FCR), FOR EACH SUCH CHILD IN ATTENDANCE AT ITS SCHOOLS.

(b) EACH LOCAL EDUCATIONAL AGENCY WOULD BE ENTITLED TO A PAYMENT FOR EACH CHILD RESIDING ON FEDERAL PROPERTY EQUAL TO 50 PERCENT OF THE FCR.

(c) EACH LOCAL EDUCATIONAL AGENCY WOULD BE ENTITLED TO A PAYMENT FOR EACH CHILD RESIDING WITH A PARENT EMPLOYED ON FEDERAL PROPERTY EQUAL TO 50 PERCENT OF THE FCR.

(d) THE FCR FOR ANY LOCAL EDUCATIONAL AGENCY WOULD BE EQUAL TO THE LOCAL SHARE PER CHILD OF THE COST OF EDUCATION FOR THAT AGENCY.

(e) THE LOCAL SHARE OF THE COST OF EDUCATION FOR ANY LOCAL EDUCATIONAL AGENCY WOULD BE EQUAL TO THE DIFFERENCE BETWEEN (1) THE AMOUNT DETERMINED TO BE NECESSARY TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION PER CHILD IN THE SCHOOLS OF THAT AGENCY AND (2) THE CONTRIBUTION PER CHILD BY THE STATE IN WHICH THAT AGENCY IS LOCATED FOR THE MAINTENANCE AND OPERATION OF ITS SCHOOLS.

(f) THE FCR FOR ANY LOCAL EDUCATIONAL AGENCY WOULD NOT BE LESS THAN 50 PERCENT OF THE AVERAGE PER-PUPIL EXPENDITURE IN THE STATE IN WHICH IT IS LOCATED.

(g) THE AMOUNT NECESSARY TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION PER CHILD IN THE SCHOOLS OF A LOCAL EDUCATIONAL AGENCY WOULD BE THE GREATER OF THE STATE AVERAGE PER-PUPIL EXPENDITURE OR THE NATIONAL AVERAGE PER-PUPIL EXPENDITURE.

(2) THAT, IN CASES WHERE THE CHILDREN RESIDING ON, OR WHERE THE CHILDREN OF PARENTS EMPLOYED ON, FEDERAL PROPERTY HAVE EDUCATIONAL NEEDS WHICH ARE SO SUBSTANTIALLY DIFFERENT FROM THE GENERAL EDUCATIONAL NEEDS OF CHILDREN IN THE STATE OR IN THE NATION AS TO REQUIRE AN EXPENDITURE OF GREATER THAN THE AVERAGE PER-PUPIL EXPENDITURE IN ORDER TO MEET THOSE NEEDS, PROVISION BE MADE FOR ADJUSTING THE AMOUNT NECESSARY THEREFOR ACCORDINGLY;

(3) THAT

(a) IN A CASE WHERE THE EXTENT OF FEDERAL PROPERTY IS SO GREAT AS TO IMPAIR THE ABILITY OF A LOCAL EDUCATIONAL AGENCY TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION FOR THE CHILDREN IN ATTENDANCE AT ITS SCHOOLS UNDER THE LAWS OF THE STATE, THE AMOUNT OF THE ENTITLEMENT OF THAT AGENCY BE DETERMINED IN ACCORDANCE WITH CRITERIA DESIGNED TO INSURE THAT SUFFICIENT FUNDS ARE AVAILABLE TO ENABLE SUCH AGENCY TO PROVIDE SUCH A LEVEL OF EDUCATION FOR THOSE CHILDREN; AND

(b) IF THE AREA OF FEDERAL PROPERTY IN THE SCHOOL DISTRICT OF A LOCAL EDUCATIONAL AGENCY CONSTITUTES AT LEAST TEN PERCENT OF THE TOTAL AREA OF SUCH DISTRICT, AND IF THAT PROPERTY HAS BEEN SUBJECT TO STATE AND LOCAL TAXATION AND HAS BEEN EXEMPTED FROM STATE OR LOCAL TAXATION BY FEDERAL ACQUISITION OR OPERATION OF FEDERAL LAW, A REBUTTABLE PRESUMPTION SHALL LIE IN FAVOR OF A DETERMINATION THAT THE ABILITY OF THAT AGENCY TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION IS IMPAIRED;

(4) THAT

(a) IN A CASE WHERE THE NUMBER OF FEDERALLY-CONNECTED CHILDREN IN ATTENDANCE AT THE SCHOOL OF A LOCAL EDUCATIONAL AGENCY CONSTITUTES SUCH A HIGH PERCENTAGE OF THE TOTAL NUMBER OF CHILDREN IN ATTENDANCE AT ITS SCHOOLS THAT THE AMOUNT TO WHICH THAT AGENCY WOULD BE ENTITLED UNDER RECOMMENDATION (1) WOULD BE INSUFFICIENT TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION FOR THOSE CHILDREN, THE AMOUNT OF THE ENTITLEMENT FOR THAT AGENCY BE DETERMINED IN ACCORDANCE WITH CRITERIA DESIGNED TO INSURE THAT SUFFICIENT FUNDS ARE AVAILABLE TO ENABLE SUCH AGENCY TO PROVIDE SUCH A LEVEL OF EDUCATION FOR THOSE CHILDREN; AND

(b) IF THE NUMBER OF CHILDREN WHO RESIDE ON, AND RESIDE WITH A PARENT EMPLOYED ON, FEDERAL PROPERTY ("A" CHILDREN) IN ATTENDANCE AT THE SCHOOLS OF A LOCAL EDUCATIONAL AGENCY CONSTITUTES AT LEAST 20 PERCENT OF THE TOTAL NUMBER OF CHILDREN IN SUCH SCHOOLS, OR IF THE NUMBER OF FEDERALLY-CONNECTED CHILDREN IN SUCH SCHOOLS CONSTITUTES AT LEAST 25 PERCENT OF SUCH TOTAL NUMBER (COUNTING "B" CHILDREN AS ONE-HALF), THAT AGENCY SHALL BE DEEMED TO HAVE SUCH A HIGH PERCENTAGE OF FEDERALLY-CONNECTED CHILDREN THAT ITS ENTITLEMENT IS INSUFFICIENT;

(5) THAT THERE BE PROCEDURES FOR MAKING DETERMINATIONS CONCERNING THE AMOUNTS AVAILABLE TO LOCAL EDUCATIONAL AGENCIES RELATING TO THE ADEQUACY OF THE LEVEL OF EDUCATION AND THEIR ENTITLEMENTS BE ESTABLISHED SO AS TO INSURE PROPER ADMINISTRATIVE AND JUDICIAL REVIEW THEREOF; AND

(6) THAT THE ENTITLEMENT OF EACH LOCAL EDUCATIONAL AGENCY BE REDUCED BY AN AMOUNT EQUAL TO THE AMOUNT THAT IT RECEIVES IN PAYMENTS FROM TAXABLE LEASEHOLD INTERESTS IN FEDERAL PROPERTY AND FROM PAYMENTS IN-LIEU OF TAXES FROM THE FEDERAL GOVERNMENT.

VIII. HOW SHOULD FUNDS BE ALLOCATED AMONG LOCAL EDUCATIONAL AGENCIES WHEN APPROPRIATIONS ARE INSUFFICIENT TO SATISFY ALL ENTITLEMENTS?

The Commission recommends --

(1) THAT ALL ENTITLEMENTS UNDER THE IMPACT AID PROGRAM BE FUNDED FULLY; AND

(2) THAT

(a) SHOULD CIRCUMSTANCES PROHIBIT FULL FUNDING OF ALL ENTITLEMENTS FOR ANY FISCAL YEAR, THEN THOSE LOCAL EDUCATIONAL AGENCIES WITH HEAVILY IMPACTED SCHOOL DISTRICTS BE GUARANTEED PAYMENT OF FULL ENTITLEMENTS FOR THAT YEAR, AND THE REMAINDER OF THE LOCAL EDUCATIONAL AGENCIES BE PAID A PORTION OF THEIR ENTITLEMENTS ON A PRO RATA BASIS, AND

(b) FOR THE PURPOSES OF THIS SECTION, THE TERM "HEAVILY IMPACTED SCHOOL DISTRICTS" BE DEFINED AS THOSE LOCAL EDUCATIONAL AGENCIES WHICH HAVE BEEN DETERMINED EITHER (1) TO HAVE SCHOOL DISTRICTS IN WHICH THE EXTENT OF FEDERAL PROPERTY IS SO SUBSTANTIAL AS TO IMPAIR THE ABILITY OF THOSE AGENCIES TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION FOR THE CHILDREN IN ATTENDANCE AT THEIR SCHOOLS, OR (2) TO HAVE IN ATTENDANCE AT THEIR SCHOOLS A PERCENTAGE OF FEDERALLY-CONNECTED CHILDREN WHICH IS SO HIGH THAT FAILURE TO PAY THE FULL ENTITLEMENT WOULD RESULT IN THE CLOSURE OF THEIR SCHOOLS OR SUBSTANTIAL REDUCTIONS IN THE LEVEL OF EDUCATION OFFERED TO THE CHILDREN IN ATTENDANCE AT THEIR SCHOOLS. (FOR THE PURPOSES OF THIS RECOMMENDATION, HEAVILY IMPACTED SCHOOL DISTRICTS ARE THOSE FITTING WITHIN THE DETERMINATION MADE UNDER RECOMMENDATIONS 3 AND 4 OF SECTION VII).

IX. SHOULD THE STATES TAKE IMPACT AID PAYMENTS INTO CONSIDERATION IN THEIR STATE AID PROGRAMS?

The Commission recommends --

(1) THAT THE PROHIBITION AGAINST TAKING IMPACT AID PAYMENTS INTO CONSIDERATION IN STATE AID TO LOCAL EDUCATIONAL AGENCIES BE CONTINUED; THAT THE STATES MAY NOT REQUIRE NOR MAY A LOCAL EDUCATIONAL AGENCY AGREE THAT LOCAL EDUCATIONAL AGENCIES SPEND IMPACT AID FUNDS FOR ANY

STATE PURPOSE OR CONSIDER SUCH AN AMOUNT OF LOCAL FUNDS FOR A STATE PURPOSE BASED UPON THE AMOUNT OF AN IMPACT AID PAYMENT TO LOCAL EDUCATIONAL AGENCIES; AND THAT GENERAL PURPOSE UNITS OF GOVERNMENT SHOULD ALSO BE PREVENTED FROM DIVERTING IMPACT AID PAYMENTS FROM DEPENDENT SCHOOL DISTRICTS;

(2) THAT, NOTWITHSTANDING THE PROHIBITION IN RECOMMENDATION (1), STATES WHICH HAVE IN EFFECT PLANS OF STATE AID TO LOCAL EDUCATIONAL AGENCIES WHICH ARE DESIGNED TO EQUALIZE, AND HAVE THE EFFECT OF EQUALIZING, AVERAGE PER-PUPIL EXPENDITURES AMONG SUCH AGENCIES, ARE TO BE PERMITTED TO TAKE IMPACT AID PAYMENTS INTO CONSIDERATION IN DETERMINING THE AMOUNT OF STATE AID TO AN AGENCY RECEIVING SUCH PAYMENTS IF --

(a) THE DISPARITY IN AVERAGE PER-PUPIL EXPENDITURES BY THE LOCAL EDUCATIONAL AGENCY HAVING THE HIGHEST AVERAGE PER-PUPIL EXPENDITURE IN THE STATE DOES NOT EXCEED 110 PERCENT OF THAT HAVING THE LOWEST AVERAGE PER-PUPIL EXPENDITURE IN THE STATE;

(b) THE AVERAGE PER-PUPIL EXPENDITURE IN THE STATE AT LEAST EQUALS THE AVERAGE PER-PUPIL EXPENDITURE IN THE NATION;

(c) THE EFFECT OF TAKING IMPACT AID PAYMENTS INTO CONSIDERATION WOULD NOT BE TO REDUCE THE AVERAGE PER-PUPIL EXPENDITURE BY THE LOCAL EDUCATIONAL AGENCY TO A LEVEL LOWER THAN THE STATE AVERAGE PER-PUPIL EXPENDITURE, AND

(d) THE AMOUNT OF SUCH PAYMENT TAKEN INTO CONSIDERATION MAY NOT EXCEED 50 PERCENT THEREOF;

(3) THAT IN DETERMINING THE LOCAL EDUCATIONAL AGENCY HAVING THE HIGHEST AVERAGE PER-PUPIL EXPENDITURE IN A STATE, ANY LOCAL EDUCATIONAL AGENCY, WHICH (BECAUSE OF UNUSUAL CIRCUMSTANCES) HAS AN UNUSUALLY HIGH AVERAGE PER-PUPIL EXPENDITURE, MAY BE EXCLUDED, EXCEPT THAT THE NUMBER OF LOCAL EDUCATIONAL AGENCIES SO EXCLUDED IN ANY STATE MAY NOT HAVE, IN THE AGGREGATE, AN AVERAGE DAILY MEMBERSHIP EXCEEDING TWO PERCENT OF THE AVERAGE DAILY MEMBERSHIP OF ALL THE LOCAL EDUCATIONAL AGENCIES IN THE STATE; AND

(4) THAT THE PAYMENT TO ANY LOCAL EDUCATIONAL AGENCY HAVING A HEAVILY IMPACTED SCHOOL DISTRICT SHALL NOT BE TAKEN INTO CONSIDERATION.

INTRODUCTION

The Commission on the Review of the Federal Impact Aid Program was established pursuant to section 1015 of the Education Amendments of 1978 (Public Law 95-561) which was enacted November 1, 1978. The law provided for a Commission, having ten members appointed by the President, charged with the mandate that it review and evaluate the administration and operation of the program authorized by Public Law 874, Eighty-first Congress, commonly known as the "Impact Aid Program."

Specifically included in that mandate was the requirement that the review and evaluation emphasize a consideration of --

> (1) the equity of the present funding structure of Public Law 874,
>
> (2) the relative benefit of assistance for impact aid under Public Law 874 in view of the increasing costs of the program and the limitation on the availability of funds, and
>
> (3) the ways in which districts of local educational agencies which are Federally impacted can best be assisted in meeting their educational needs.

As originally enacted, section 1015 required that the Commission prepare and submit, not later than December 1, 1979, to the President and the Congress, a report on its review and evaluation, together with such recommendations as the Commission deems appropriate. Such recommendations are to include recommendations for legislation relating to the authorization for, and funding of, the Impact Aid Program. Subsequent to the enactment of Public Law 95-561, the Congress enacted Public Law 96-46, which extended the time for the study and set the new reporting date on December 1, 1980, and Public Law 96-374, extended the reporting date to September 1, 1981.

The members of the Commission were appointed by the President and the Commission began its work on August 15, 1979. The members so appointed are as follows:

> Charlie Akins, of Elizabethtown, Kentucky, superintendent of the Hardin County Schools and State chairman of the Kentucky Impact Aid Schools Organization;
>
> Polly Baca-Barragan, a Colorado State senator who serves on the board of directors of the National Mexican-American Legal Defense and Educational Fund and the National Housing Assistance Council;
>
> Edward C. Bolstad, of Minneapolis, executive secretary of the Minnesota Federation of Teachers;

Robert L. Chisholm, superintendent of schools for the Clover Park School District in Tacoma, Washington, and a member of the board of directors of the Northwest Regional Education Laboratory;

Anselm G. Davis, Jr., assistant superintendent of the Window Rock School District No. 8 in Fort Defiance, Arizona, and a former education specialist with the Bureau of Indian Affairs;

Franklin L. Lewis, a member of the Nebraska State Legislature and former chairman of its Education Committee who has been a classroom teacher;

Frank J. Macchiarola, chancellor of the New York City Public Schools and a former professor of political science;

Barbara Roberts Mason, an executive director of the Michigan Education Association, president of the Michigan State Board of Education, and former speech therapist;

Harold E. Rogers, Jr., a San Francisco attorney specializing in the field of municipal law and finance (Chairman, designated by the President);

Virginia Allred Stacey, of San Antonio, Texas, a teacher in the Lackland Independent School District and 1978-79 State president of the Texas State Teachers Association (Vice Chair, selected by the Commission).

The Commission held ten business meetings and ten hearings, as well as conducted in-house research. On the basis of study completed by January 9, 1981, the Commission found that sufficient information had been gathered and analyses finished to merit the submission of a report on the areas of the study so nearly completed as to support recommendations. The areas of the study which were not so complete are as follows:

(1) a comparison of the relative benefits of Title I of the Elementary and Secondary Education Act of 1965 with those of payments based on entitlements under the Impact Aid Program which arise from low-rent public housing property;

(2) the study of the impact of Federal policies and activities (other than those which are connected with Federal property) on local educational agencies;

(3) the relationship between Impact Aid payments and State programs of financing public education; and

(4) the disaster relief provisions of existing law.

The Commission acknowledges that this report is long on theoretical analysis and short on statistical data. The approach taken was designed to provide a theoretical framework for the program based solely upon the premises upon which the program was originally founded and an examination of the present validity of those premises. The Commission is cognizant of the fact that each facet of the program has deep-running political implications which can be examined only with the use of statistical and other data which either support, or illustrate the implications of, the recommendations made herein. Those data available which give a contextual statement for this report are included. Those illustrating the effect of the recommendations, were they enacted, are not available because of limited funds for automatic data processing.

The Commission believes that having recommendations based on theory is of value to the Congress, in that variances from the theoretical framework of the recommendations, based upon their political implications, can be adopted as conscious decisions to depart from theory or any basis the Congress determines to be valid. Data relating to these decisions would be available if the Congress requires them.

Statistical and other data are, within funding capacity of the Commission, to be available so that policy makers can make their decisions based on a factual statement as to what ought to be the case under pure theory of that which is, on other grounds, also valid ground for making policy.

As a matter of format, this report has five chapters, the first three of which are designed to be considered separately from the others while the last two chapters rest upon the previous three. Therefore, material is repeated rather than referred to by cross reference. The additional space used in repetitions is more than justified by the difficulties which arise from numerous cross-references.

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MEETINGS
OF THE
COMMISSION ON THE REVIEW
OF THE
FEDERAL IMPACT AID PROGRAM

1) **FIRST MEETING:** September 28-29, 1979, Washington, D.C.

Adminstration of oaths of office for Commission members; organization of the Commission; discussion and determination of the means by which the charge of the Commission is to be implemented.

2) **SECOND MEETING:** December 14, 1979, Chicago, Illinois

Commission considered a Plan of Study for its evaluation and review of Impact Aid, and determined the dates, sites, and purposes of subsequent meetings of the Commission.

3) **THIRD MEETING:** April 22, 1980, San Francisco, California

Commission considered a staff report and adopted the Interim Report, with the understanding that Supplemental Documentation for the Interim Report would be considered at the Fourth Meeting.

4) **FOURTH MEETING:** May 1, 1980, Montgomery, Alabama

Commission considered a staff report previously submitted by the Commission staff, and agreed to submit a revised staff report as the Supplemental Documentation for the Interim Report to the Congress.

5) **FIFTH MEETING:** May 30, 1980, Washington, D.C.

Commission adopted policies for the development of findings and recommendations to accompany the Commission's final report and rescheduled activities at variance with the Plan of Study.

6) **SIXTH MEETING:** July 17-18, 1980, Chicago, Illinois

Commission considered policy findings based on the evidence gathered through the hearings, together with supplemental evidence, and adopted a Special Report, requesting additional authority from the Congress, regarding reports supplemental to its final report.

7) **SEVENTH MEETING:** September 18-19, 1980, Washington, D.C.

Commission considered recommendations, and other Commission business.

8) **EIGHTH MEETING:** November 6-7, 1980, Washington, D.C.

Commission considered and deferred adoption of a report, conducted other Commission business, including scheduling a meeting of the Commission January 29-30, 1981 for adoption of a report, and other Commission business.

9) **NINTH MEETING:** January 29-30, 1981, Washington, D.C.

Commission adopted a draft report, pending final approval at the next Commission meeting, and conducted other Commission business.

10) **TENTH MEETING:** July 16-17, 1981, Washington, D.C.

Commission adopted its final report.

CHAPTER I

THE ESTABLISHMENT AND OPERATION OF THE COMMISSION ON THE REVIEW OF THE FEDERAL IMPACT AID PROGRAM

The Commission on the Review of the Federal Impact Aid Program is established pursuant to section 1015 of Public Law 95-561 and is governed, to the extent not inconsistent with section 1015, by the provisions of part D of the General Education Provisions Act (commonly known as the "Education Advisory Council Code").

A. LEGAL AUTHORITY

Section 1015 of Public Law 95-561 provided that the President was to appoint a Commission on the Review of the Federal Impact Aid Program, consisting of ten members, that the Commission was to review and evaluate the administration and operation of the Impact Aid Program, and that the Commission was to prepare and submit to the President and to the Congress, not later than December 1, 1979, a report on its review and evaluation, together with such recommendations (including recommendations for legislation relating to the authorization of, and funding for, the Impact Aid Program) as the Commission deems appropriate.

The operation of the Commission has been governed by the authority and procedures set out in the Education Advisory Council Code (EACC). Under the EACC, --

> (1) the members of the Commission are compensated at rates fixed by the Commissioner of Education (now the Secretary of Education), and receive reimbursement for expenses as intermittent employees in the Government service;
>
> (2) the Commission is authorized to obtain the services of such professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions; and
>
> (3) the Commission meets at the call of the Chairman and keeps minutes of its meetings and is subject to audit and review by the Comptroller General of the United States.

In accordance with these provisions of law, the Federal Advisory Committee Act, the Secretary of Health, Education, and Welfare issued a charter for the Commission on July 30, 1979. (That charter is attached as Appendix A.)

On July 22, 1980, the Commission submitted a special report to the Congress in which it requested the authority to submit at least one, but not more than three, reports supplemental to its final report. (A copy of that special report is attached as Appendix B.) In response thereto, the Congress, in section 1304 of Public Law 96-374, extended the duration of the Commission until September 30, 1981, and provided that the final report of the Commission was to be submitted not later than September 1, 1981.

In addition, section 1304 of Public Law 96-374 clarified ambiguities concerning the terms of office and the quorum for the Commission. Under the EACC, the terms of office of members of advisory councils are three years and their terms are to be staggered at one year intervals. In addition, the law has been interpreted as requiring those councils to have quorums equal to the number of positions for members, regardless of the number which may be vacant. Section 1304 made clear that the terms of office for the members of the Commission are to be coterminous with the duration of the Commission and that a quorum of the Commission is equal to a majority of the number of members who are actually serving.

As a result of this legislation, a new charter was necessary. The Commission adopted a new charter on November 7, 1980, a copy of which is attached as Appendix C.

B. ESTABLISHMENT OF THE COMMISSION

On August 15, 1979, the President appointed the members of the Commission and, in so doing, designated Mr. Harold E. Rogers, Jr., Chairman of the Commission. A temporary Executive Director was designated with authority to prepare for the First Meeting of the Commission which the Chairman scheduled for September 28 and 29, 1979.

The direction to the temporary Executive Director to prepare for the First Meeting included the authority to develop a proposed Plan of Study and the responsibility for the actual logistics of setting up that meeting.

Upon direction of the Chairman, the staff developed a proposed Plan of Study which had two emphases: (1) an in-house research capability which was to prepare for making recommendations through a series of special studies on each of the issues likely to be raised, and (2) a limited number of hearings designed to hear the views of interested parties and gather evidence upon which recommendations could be based. This Plan of Study was estimated to cost $575,000 for fiscal year 1980.

At the First Meeting, held in Washington, D.C., on September 28 and 29, 1979, the Commission selected a Vice Chair, Ms. Virginia Stacey, considered the proposed Plan of Study, hired the temporary staff as permanent staff, adopted a tentative budget, and agreed to meet in Chicago, Illinois, on December 14, 1979, to consider a revised Plan of Study. Staff was directed to develop a revised Plan of Study with greater emphasis on public hearings and site visits, to make a report on proposed Impact Aid reforms, and to survey statistical data available to the Commission. Authority was given to hire additional staff necessary to prepare for the Second Meeting.

Additional staff, primarily research assistants, entered upon duty November 4, 1979. The research staff was chosen purposely with no background in Impact Aid in order that the study remain as objective and unprejudiced as possible. The new staff prepared a revised Plan of Study in accordance with the directions of the Commission. That Plan of Study was mailed to the members of the Commission on December 1, 1979. At the Second Meeting on December 14, the Commission considered, modified, and adopted the Plan of Study.

The general rationale of the Plan of Study was that, during the months of February, March, April, and May (1980), the Commission would hold hearings and the research staff would develop policy papers based on special studies of the issues; during the months of June, July and August, the Commission would develop recommendations by circulating drafts by mail, with a view toward developing a consensus on those recommendations or, if none were to be had, narrowing the issues to those in actual disagreement so they could be resolved in a deliberate and judicious manner.

The work of the Commission was to end with two meetings: one to consider recommendations, and another to adopt a final report for submission to the Congress not later than December 1, 1980.

C. THE PLAN OF STUDY

The Plan of Study, as adopted by the Commission on December 14, 1979, was conducted in the context of three major questions:

(1) What is the effect of Federal activities on the ability of local educational agencies to provide education for the children in their schools? Is there a net economic benefit or is there a net burden? In order to examine this issue in a systematic manner, an "economic impact model" was been developed, designed to determine the net benefit or burden of Federal activities on a number of local educational agencies.

(2) How do the States and their local educational agencies finance the operation of their schools? To what extent is there a reliance upon taxation of real property? In jurisdictions relying upon taxation of real property as a source of revenue, what are the obligations which arise from mere ownership of land and what are those which arise from the use of land? How does the Federal Government, as a user and owner of land, fit into the school finance picture in those jurisdictions? Does Federal ownership and use of land create an inherent obligation to the local government having jurisdiction over that land, without regard for any economic benefit which may be had from Federal activities?

(3) What is the obligation of the Federal Government for the education of federally-connected children? There is a history behind Federal assistance for the education of military dependents going back to the

1820's. There are treaty obligations relating to the education of Indian children. Are the obligations of the Federal Government for the education of these children different from those for that of dependents of civilian employees of the Government? If there is an obligation, should not their educational needs be the major factor in determining the amount of assistance?

The studies were grouped for discussion purposes into three areas paralleling the three specific charges under which the Commission operates.

1) The Equity of the Present Funding Structure

The Commission examined the equity of the funding structure of Impact Aid by considering how the Federal Government burdens localities and whether compensation through Impact Aid for that burden is adequate and fairly distributed. The special studies outlined herein address these questions of burden and compensation.

In order to examine the fairness of the funding structure of the Impact Aid Program, the Commission studied the definition of Federal property, asking if all property burdening a locality is included and if all property not burdening a locality is excluded from that definition. It also considered whether the rationale of compensating localities for federally-imposed burdens calls for compensating local educational agencies for the cost of educating the children of refugees and undocumented aliens and for the cost of complying with Federal regulations. Also considered were the nature of the burden imposed by increased or decreased Federal activities.

Pertinent to the fairness of the existing structure of Impact Aid is the eligibility requirement of the law and whether a minimum local absorption of costs is necessary for consistency with that requirement. Finally, the Commission considered in-lieu of taxes payments some Federal agencies make to localities.

After examining the burden of Federal activities and land ownership on localities, the Commission considered the fairness of the measure of compensation--based on assumptions about local support for public education--to determine its validity in light of changes in school financing, an increased State role, and the possibility that other measures may more accurately reflect the cost of educating federally-connected children. The Commission studied trends in financing education, investigating the relationship between State and local sources of revenue for education.

2) Relative Benefit of Assistance for Impact Aid

The Congress charged the Commission with considering the "relative benefit of the assistance for impact aid under Public Law 874 in view of the increasing costs of the program and the limitation on the availability of funds." To do this, the Commission intended to compare similar allocations under Impact Aid and comparable categorical programs.

The Commission was to compare an allocation of funds under Impact Aid for low-rent public housing with allocations under Title I of the Elementary and Secondary Education Act of 1965, addressing where the money for each program could go and for what purposes it would be used. Another comparison the Commission was to make was of the allocation of funds under Impact Aid with a similar allocation under the Indian Education Act.

3) The Best Means of Assisting Federally Impacted School Districts

The Commission considered the best means by which impacted school districts can be assisted in meeting educational needs by addressing a number of issues: (1) the propriety of continuing to base entitlements on the basis of the current concept of the local contribution rate; (2) the treatment of heavily impacted school districts, of children residing on Indian lands, of dependents of military personnel and civilian Federal employees, and of children in low-rent public housing; and (3) the effect of State equalization plans on Impact Aid policy.

Each of these issues was considered in light of the propriety of basing Impact Aid payments on the educational needs of federally-connected children rather than an approximate amount as it is assumed a locality would have contributed for the education of a federally-connected child if tax revenues had not been reduced by Federal activities.

D. VARIANCE FROM THE PLAN OF STUDY

Circumstances did not permit the Commission to comply precisely with the Plan of Study adopted on December 14, 1979. Those circumstances were as follows:

1) Congressional Request for an Interim Report

On March 31, 1980, the Commission received a request from Senator Warren G. Magnuson of Washington, Chairman of the Committee on Appropriations of the United States Senate, that the Commission submit an interim report to the Congress. On April 1, 1980, the Commission received a similar request from Representative Carl D. Perkins of Kentucky, Chairman of the Committee on Education and Labor of the United States House of Representatives. (Copies of these two requests are attached as Appendices D and E.)

The Commission, under the Plan of Study, had not scheduled itself to make policy decisions at that time or even to have a meeting at which such a report could have been adopted. Even though there was a question regarding the applicability of the Federal Advisory Committee Act to the Commission, the Commission was, as a matter of good public policy, acting in accordance with the public participation provisions of that Act. Therefore, it was necessary to publish notice of a meeting of the Commission in the Federal Register at least 15 days prior to the meeting.

The Commission had, under the Plan of Study, scheduled a hearing in San Francisco, California, for April 22, 1980, at which all members were either scheduled, or could arrange, to be present. Therefore, the Chairman of the Commission, exercising the authority vested in that position under section 446 of part D of the General Education Provisions Act, issued a call for the Third Meeting of the Commission to coincide with the previously scheduled hearing in San Francisco. At the same time, because there was no certainty that a decision of the Commission could be reached in the time allotted for the Third Meeting, a call was issued for a business meeting to occur in Montgomery, Alabama, in conjunction with a scheduled hearing at that site on May 1, 1980. At the direction of the Chairman, the staff prepared a report on the progress of the work of the Commission which was to be available for consideration at these meetings.

On April 22, at the Third Meeting of the Commission, a decision was made to submit an Interim Report which did not contain recommendations, but did contain a statement of policy findings which indicated that the Commission would recommend a continuation of the Impact Aid Program and set out general policies which would constitute guidelines for the development of final recommendations. (A copy of these findings is attached as Appendix F.) It was also agreed that the staff report submitted to the Commission, with a few modifications, would be laid before the Commission at the Fourth Meeting in Montgomery, Alabama, as Supplemental Documentation for the findings announced in the Interim Report.

On May 1, 1980, the Commission met in Montgomery pursuant to the call of the Chairman, considered the Supplemental Documentation, and agreed to its submission in conjunction with the Interim Report.

Actions of the Commission, as the result of the congressional requests, were at variance with the Plan of Study, preparations for which actions and the result thereof required substantial modification of the Plan of Study. These modifications were formalized at the Fifth Meeting on May 30, 1980, at which it was agreed that, rather than use the circulating draft method of developing recommendations, a Sixth Meeting would be scheduled on July 17 and 18, 1980, to consider policy findings, a Seventh Meeting would be scheduled for September 18 and 19, 1980, to consider recommendations, and an Eighth Meeting would be scheduled for November 6 and 7, 1980, to consider a report to the Congress.

2) The Economic Impact Study

When the Commission adopted the Plan of Study, the procedure for determining the economic impact of Federal activities on local educational agencies was an incomplete concept, at best. The feasibility of such a study was uncertain, and, if such a study were feasible, the extent that it could be conducted by the Commission (with limited time and budgetary constraints) was even less certain.

By the second week of May a model designed to measure the fiscal impact of Federal military installations on local educational agencies on a case-by-case basis had been developed, tested, and found to be theoretically sound.

It was determined also that it was probably feasible to devise another model, on similar principles, which could measure that impact on an aggregate basis.

The time constraints under which the Commission was operating did not permit a thorough use of the case study model. Budgetary limitations, respecting the use of automatic data processing, prevented the development of the aggregate study model. These constraints and limitations were the subject of discussion at the Fifth Meeting, within the context of a motion to submit to the Congress a special report requesting the authority to submit reports supplementary to the final report. Further consideration of that motion was postponed until the Sixth Meeting at which it was adopted; a special report to the Congress was submitted; and legislative authority permitting a more thorough economic impact study was granted. The Plan of Study was altered accordingly.

3) The Education of Alien Children

The original Plan of Study had, because of early indications of concern, provided for some consideration of the financial impact on local educational agencies of Federal laws, regulations, and other activities. However, evidence presented before the Commission and intervening events made the Plan of Study obsolete, in that the Plan of Study did not encompass sufficient consideration of these issues and that a plan to consider them having sufficient quality and scope could not be implemented within the time allowed the Commission to finish its review and evaluation of the Impact Aid Program.

Specifically, witnesses before the Commission expressed an overwhelming belief, supported by evidence, that the Federal Government had an obligation to assist local educational agencies with the costs they incur in educating alien children, both documented and undocumented, who are in the United States under, or in spite of, the immigration policies of the Federal Government.

The recent immigration from Southeast Asia and the Caribbean region, as well as Federal court rulings regarding the rights of undocumented alien children under the Constitution brought these issues before the Commission so forcefully that, at the Fifth Meeting, it was decided that further study in this area should be considered at the Sixth Meeting in conjunction with the proposal to submit a special report to the Congress.

In addition, witnesses noted that mounting costs to local educational agencies in complying with Federal laws and regulations constitute a Federal burden which, while not of the same magnitude, is just as real as that which arises from educating children who are connected with Federal property. Although there was some evidence regarding the local costs of complying with many of the laws intended to promote equality of opportunity, evidence was especially persuasive with regard to Federal requirements under the Education of the Handicapped Act, as amended by Public Law 94-142. A question of the propriety of entering into this area limited further consideration of this evidence, even though recent regulations concerning bilingual education could increase the magnitude of these costs sufficiently to merit congressional concern.

4) Incomplete Studies

Two important studies originally set out in the Plan of Study were not completed because of the inability to obtain approval of contracts and experts:

(a) that which was intended to study the relative benefits of Impact Aid payments under low-rent public housing entitlements with payments under Title I of the Elementary and Secondary Education Act of 1965; and

(b) that which intended to study the relationship between Impact Aid payments and State aid to education programs.

Concern about the incompleteness of these studies prompted the motion at the Fifth Meeting to submit a special report to the Congress requesting additional authority.

The result of these modifications in policy was a decision to complete the work of the Commission with regard to recommendations on the traditional Impact Aid Program (including low-rent public housing) which would be presumed to be final except in those areas which completion would be impossible without supplemental authority from the Congress.

E. HISTORICAL BACKGROUND OF THE PROGRAM

The Impact Aid Program is relatively simple in concept: it has been designed to compensate local educational agencies for the financial burdens imposed on them for (1) loss of revenue due to non-taxable Federal property, and (2) the burden of providing education for federally-connected children.

The amount of compensation is determined by an entitlement for each eligible local educational agency which is computed by multiplying the number of federally-connected children by a portion of dollar amount of local revenues which could reasonably be expected for the education of those children.

Payments are made to eligible local educational agencies directly from the Federal Government; however, State educational agencies are consulted with respect to determinations of the amounts of local contributions. Because the Federal payment is designed to compensate for lack of local revenues resulting from Federal activities, local educational agencies use the Federal payment in the same way and for the same purposes as they use their other revenues raised from local sources.

In spite of the simplicity of this concept, years of seeking equity and political compromise have resulted in an extremely complex law.

1) The Beginning of the Program

During World War II, the Federal Government recognized that the activities associated with the war effort were placing financial burdens on local educational agencies which they were not capable of carrying without assistance. These local educational agencies generally had school districts in which were located, or which were adjacent to, military installations. In addition, there was a concern that children of military and civilian employees of the Federal Government receive an adequate educational opportunity, regardless of the location of the military installation in connection with which their parents were employed.

The Congress authorized the Commissioner of Education to negotiate contracts with those local educational agencies under which they were to receive sufficient funds to provide at least a minimum level of education for all children in attendance at their schools. In negotiating those contracts, flexible, informal formulas for computing the amounts local educational agencies were to receive were developed and used.

With the end of World War II and demobilization, the affected local educational agencies sought an alternative approach and began to work for a more formalized program designed to continue payments to local educational agencies and to give greater certainty as to the amounts they would receive. With the outbreak of the Korean conflict in June, 1950, and the resultant military build-up, the Congress adopted the approach advanced by the affected local educational agencies and enacted two bills which were signed into law by President Truman in September, 1950--Public Laws 815 (on September 23) and 874 (on September 30) of the Eighty-first Congress.

Public Law 815 authorized grants for the construction of school facilities to house school enrollment increases due to Federal activities.

Public Law 874 authorized payments to local educational agencies to assist them with the maintenance and operation of their schools. The program authorized by Public Law 874 has continued and expanded since that time. The appropriation for fiscal year 1951 was $29,080,788.

2) The Law as Originally Enacted

As originally enacted, Public Law 874 provided for Federal assistance under four circumstances:

(1) local educational agencies in the school districts in which the Federal Government had acquired substantial real property after 1938 (section 2);

(2) local educational agencies providing education for substantial numbers of federally-connected children (section 3);

(3) local educational agencies affected by sudden and substantial increases in enrollments as the result of Federal activities (section 4); and

(4) payments to other Federal agencies for the operation of schools for dependents of Federal employees in places where State and local revenues could not be used for their education or where there were no local educational agencies to provide suitable education for them--these were usually schools on military bases (section 6).

The other sections of the law declared congressional policy (section 1), provided for applications and methods of making payments (section 5), and set out administrative provisions and definitions.

The most important section of the law, for the purposes of this study, was section 3, in that payments under that section were made to the greatest number of local educational agencies, in the largest amounts. Under section 3, a very simple formula was used to determine the amounts to which local educational agencies were entitled. It contained three factors: the number of federally-connected children, the local contribution rate (LCR), and minimum eligibility requirements.

Federally-Connected Children. The number of federally-connected children to be counted for determining the amount of the entitlement of a local educational agency was all of the children in attendance at its schools who both lived on Federal property and lived with a parent who was employed on Federal property (this determination was made under section 3(a) and, therefore, these children were called "A" children), plus the number of those children who either lived on Federal property or lived with a parent employed on Federal property (this determination was made under section 3(b) and, therefore, "B" children). This factor was necessarily controlled by the definition of "Federal property."

Local Contribution Rate. Under this formula, the number of federally-connected children was to be multiplied by the appropriate local contribution rate (LCR) (or 50 percent thereof, in the case of "B" children) for the particular local educational agency. The amount of the LCR for a local educational agency was to be a determination of the cost per pupil which would have been paid from local revenues had these revenues not been reduced by Federal activities or which would have been available if local taxes had been paid to support the education of federally-connected children. The determinations of these amounts were found to be almost impossible to compute and, even if computed, were at best theoretical. Thus the law looks to comparable school districts for a guide as to what local revenues would have been for federally-connected children. In order to determine the LCR for the federally-affected local educational agency, other local educational agencies which are not federally-affected are examined. The per-pupil expenditure from local sources of those local educational agencies, which are comparable with the affected local educational agencies, then becomes the dollar amount of the LCR used in the computation.

Eligibility. Originally, no local educational agency could receive an Impact Aid payment unless the number of federally-connected children determined for that local educational agency was at least ten and, in most cases, that number constituted at least three percent of the enrollment at the schools of the local educational agency. In the cases of local educational agencies in which the enrollment exceeded 35,000, the number of federally-connected children had to be at least six percent, in which cases the local educational agencies received payments only with respect to the number of federally-connected children in excess of three percent of their enrollment.

Deductions. In addition to these three factors, amounts received by local educational agencies were reduced by deductions equal to taxes and other Federal payments from other agencies received by the local educational agency.

Definitions. Two definitions in the law affected the number of children which could be counted as being federally-connected:

(1) the definition of "child" excluded any child who was a member or dependent of a member of an Indian tribe or organization recognized by the Federal Government if that child was eligible for educational services through the Bureau of Indian Affairs, and

(2) the definition of "Federal property" was confined to that which was actually owned by the Federal Government and not used for the benefit of the local area.

3) The Expansion of the Program Prior to 1974

In spite of repeated efforts on the part of each administration in control of the Executive Branch to reduce, or prevent growth in, the Impact Aid Program, the Congress, over the period of twenty years, amended Public Law 874 many times with the effect of expanding both the number of local educational agencies receiving Impact Aid payments and the amounts of those payments.

Each of the factors which determined participation in the program and the amounts of payments was altered in favor of expansion:

(1) the number of federally-connected children was increased by expanding the definition of "Federal property" and "child;"

(2) the method of computing LCR was modified by creating minimums based on State and national average per-pupil expenditures as alternatives to the comparable school district method;

(3) eligibility requirements were lowered with the result that larger local educational agencies having less heavily impacted school districts were made eligible; and

(4) deductions for taxes and other Federal payments to local educational agencies were discontinued.

Prior to 1974, the Congress enacted 25 laws which amended Public Law 874 effecting these changes. The major expansion took place as follows:

The Number of Federally-Connected Children

(1) Whereas children of military personnel originally were counted only if the military parent was actually employed on Federal property, amendments in 1953 and 1956 permitted these children to be counted by reason of their parents' being in the uniformed services without regard for the ownership of the property on which they were serving.

(2) Whereas originally Indian children served by the Bureau of Indian Affairs were excluded from the count, amendments in 1958 permitted those children to be counted.

(3) Whereas originally public housing property was excluded, amendments in 1970 expressly included low-rent public housing within the definition of "Federal property."

Local Contribution Rate. In 1953, the law was amended to set a minimum LCR equal to one-half of the State average per-pupil expenditure without regard as to whether those expenditures were from local revenues. In 1965, a second minimum LCR equal to one-half of the national average per-pupil expenditure was established. In addition, the law has been changed a number of times regarding the method by which comparable districts were to be determined.

Eligibility Requirements. Whereas the original law required local educational agencies with enrollments in excess of 35,000 to meet a six percent eligibility requirement, an amendment in 1965 set a uniform three percent requirement for all local educational agencies, and an amendment in 1966 provided that, if a local educational agency had 400 federally-connected children, it was eligible for payments without regard for the percentage that number constituted of the total enrollment of the local educational agency.

Deductions for Other Federal Payments. Whereas the original law recognized that some local educational agencies were being compensated for tax losses through payments from other departments for such activities as grazing lands and forest lands and required that the amounts of such compensation be deducted from the Impact Aid payments, an amendment in 1967 discontinued such deductions.

During the period between the enactment of Public Law 874, through the revision of 1974, and up to fiscal year 1979, the history of the aggregate of the amounts to which all local educational agencies were entitled and appropriations to make payments to satisfy those entitlements is as follows:

HISTORY OF 874 FUNDING

Fiscal Year	Total* Applicants	Ineligible* Applicants	Eligible* Applicants	Net Entitlement	Amount Appropriated
1979[a]	4,409	117	4,292	807,182,816	768,882,539
1978	4,460	92	4,368	733,802,560	759,165,867
1977	4,472	132	4,340	745,702,360	768,000,000
1976	4,436	87	4,349	709,790,604	715,000,000
1975	4,458	157	4,301	611,192,871	636,016,000
1974	4,544	185	4,359	563,987,539	574,416,000
1973	4,727	153	4,574	580,727,774	635,495,000
1972	4,789	186	4,603	584,470,028	592,580,000
1971	4,824	196	4,628	529,531,042	536,068,000
1970	4,798	139	4,659	504,388,007[b]	507,646,288
1969	4,864	340	4,344	501,202,458[c]	505,900,000
1968	4,585	349	4,236	480,000,602[d]	486,355,000[e]
1967	4,475	427	4,048	413,448,657[f]	416,200,000
1966	4,348	312	4,036	369,151,171	388,000,000
1965	4,176	129	4,047	319,244,712	332,000,000
1964	4,182	130	4,052	292,690,225	320,670,000
1963	4,270	160	4,110	264,363,373	282,322,000
1962	4,159	154	4,005	238,675,168	247,000,000
1961	4,079	153	3,926	208,262,362	217,300,000
1960	3,963	166	3,797	184,825,548	186,300,000
1959	3,963	206	3,757	156,847,056	157,362,000
1958	3,518	175	3,343	122,379,504	127,000,000
1957	3,528	207	3,321	111,314,914	113,050,000
1956	3,018	193	2,825	85,671,844	90,000,000
1955	2,832	149	2,683	75,276,843[g]	75,000,000
1954	2,673	149	2,524	71,860,087	72,350,000
1953	2,361	149	2,212	57,696,592	60,500,000
1952	1,891	128	1,763	47,814,282	51,570,000
1951	1,298	126	1,172	29,686,018[h]	29,080,788

* Applicants under sections 2, 3, and 4.

[a] Data for fiscal year 1979 is estimated.

[b] Payments prorated at 75 percent for fiscal year 1979.

[c] Payments prorated at 91.7 percent for fiscal year 1969.

[d] Payments prorated at 98 percent for fiscal year 1968.

[e] $486,355,000 is the amount allotted of the $507,165,000 appropriated by the Congress.

[f] Payments prorated at 98.7 percent for fiscal year 1967.

[g] Payments prorated at 99.5 percent for fiscal year 1955.

[h] Payments prorated at 96 percent for fiscal year 1951.

4) Appropriations for the Period 1951-1974

Prior to fiscal year 1969, the appropriations for making payments to local educational agencies under Public Law 874 were, with the exceptions of fiscal years 1965 and 1967, sufficient to satisfy fully the entitlements created under the law. That being the case, the provisions of section 5(c) of the law, which made allowance for the eventuality of insufficient appropriations, were of minor importance. Section 5(c) provided that, if appropriations were insufficient to satisfy fully all entitlements for any fiscal year, the amount paid on each entitlement that year was to be reduced in proportion to the amount of the insufficiency.

Beginning with fiscal year 1969, appropriations were consistently and substantially insufficient to satisfy entitlements. This was the period when the authorizing law was expanded by lowering eligibility requirements, increasing the LCR, and including low-rent public housing as Federal property.

The insufficiency was $56.1 million in fiscal 1969, $145.2 million in 1970, $399.2 million in 1971, $432.4 million in 1972, and $389.5 million in 1973. The full effect of these insufficiencies was minimized by excluding payments for entitlements based on children from low-rent public housing.1/ Even so, the insufficiencies were great enough that the ratable reduction language of section 5(c) came into play.

In the case of local educational agencies for which Impact Aid payments were a relatively small percentage of their budgeted current expenditures, these reductions did not cause major disruptions in their school operations. It was different for local educational agencies which were dependent upon Impact Aid payments. Heavily impacted school districts were threatened with serious disruptions--even school closings. These disruptions in school operations became a source of real concern.

1/ In 1970, Public Law 91-230 amended Public Law 874 to include low-rent public housing. Section 203(b) of Public Law 91-230 amended the definition of "Federal property" to include real property which is part of a low-rent housing project assisted by the Federal Government. Section 203(c)(4) of that law amended section 5(c) of Public Law 874 (relating to adjustments necessitated by insufficient appropriations) to provide that entitlements based on children connected with low-rent public housing property were not to be funded unless appropriations for the program were sufficient to fund all other entitlements first or unless there were an appropriation specifically for the purpose of funding the low-rent public housing entitlements. Under neither provision was funding made available. In 1974, section 5(c) of Public Law 874 was revised by section 305(a)(2) of Public Law 93-380. As so revised, public housing entitlements were to be funded at minimal levels.

The Congress had a choice: either to appropriate sufficient funds to satisfy more nearly the entitlements of all local educational agencies or to make some kind of special provision for heavily impacted school districts. The latter choice was taken and emergency legislation was enacted in 1969, which gave local educational agencies having an enrollment of at least 25 percent "A" children payments equal to their full entitlements. These local educational agencies were, as a consequence, recognized thereafter as a special category of school district and called, informally, "Super A's." Subsequent appropriations acts, in recognition of the special needs of "Super A" districts, contained special language giving them full funding. In addition, those acts provided that entitlements based on "A" children in other school districts would be paid at the rate of 90 percent and entitlements based on "B" children would be paid at lesser percentages, dependent upon estimates as to how much of the "B" entitlements could be covered by the appropriation. At the same time, the ratable reduction language in section 5(c) of the authorizing law remained unchanged.

By 1974, the method of making payments controlled by the appropriations acts bore no resemblance to that for which provision was made in the authorizing legislation, creating a jurisdictional conflict between the congressional committees responsible for the authorizing legislation and the committees on appropriations. This issue was one of several addressed in the 1974 revision of section 5 of Public Law 874.

5) Earlier Studies of Impact Aid

Impact Aid has been the subject of much controversy since its beginning. The Eisenhower, Kennedy, Johnson, Nixon, Ford, and Carter Administrations each recommended major reductions in the program, while the Congress has consistently expanded it.

The major proposals advanced by the Executive Branch since 1960 can be summarized as follows:

In 1961

(1) To reduce LCR for "B" children from 50 percent to 25 percent.

(2) To raise eligibility requirements for "B" children to six percent.

(3) To eliminate the alternate minimums for LCR.

In 1966

(1) To require all school districts to "absorb" the first three percent of the federally-connected children (that is, to make payments only on the basis of the number of federally-connected children in excess of three percent of their enrollment).

(2) To eliminate the alternate minimums for LCR.

(3) To eliminate from the definition of "Federal property" any property leased from the Federal Government.

In 1969

To amend section 5(c) (method of making payments) by authorizing payments for "A" children before making payments for "B" children.

In 1970

(1) To reduce LCR for "B" children to 40 percent if their parents worked in the same county as that in which the school district was located and 20 percent for other "B" children.

(2) To require a three percent absorption.

(3) To reduce payments for wealthy school districts.

(4) To deduct Federal in-lieu of taxes payments from Impact Aid payments.

The reasons for the divergence in policy toward Impact Aid between the two branches of the Government probably involve a disagreement in the manner in which Federal funds ought to be allocated among Federal activities and the method of applying for those funds and the approval of applications.

In general, the budgeting process used by the Executive Branch places a low (or even negative) priority on the use of Federal funds for the maintenance and operations of agencies and institutions which are under the control of non-Federal governments. In addition, the Executive Branch generally has a policy in favor of application procedures through which applicants compete for limited resources, under the theory that competition improves applications and the programs operated under those applications.

The Congress tends to find non-competitive grants of "no-strings" money attractive because they are popular at the local level and cause fewer irritations with "red tape." Under the Impact Aid Program, local educational agencies count the number of federally-connected children, determine the local contribution rate, calculate the amount of their payment, and apply directly to the Secretary of Education. If they are eligible, they receive the funds which are placed in the school budget and expended in the same manner as their local funds are spent. This simple procedure is more nearly consistent with congressional policies than with those of the Executive Branch.

The current review of the Impact Aid Program is the third study of the program mandated by Congress. These studies have, in each instance, been the result of questions arising out of the longstanding disagreement between the two branches of the Government. The two previous studies were conducted under contracts between the Office of Education and private research organizations--the Stanford Research Institute (SRI) and the Battelle Memorial Institute.

The first study was the result of a requirement included in Public Law 88-665 (enacted October 16, 1964) which required that the Commissioner of Education submit by June 30, 1965, a report on the operation of Public Laws 815 and 874, together with recommendations as to the extent to which both laws should be amended at the time the Impact Aid Program was next to be extended (1966). The Commissioner contracted with SRI for this study. This study was completed, and a report was submitted to Congress. The recommendations formed the basis for some of the legislative proposals sent to the Congress by the Johnson Administration in 1966. For the most part those proposals were rejected by the Congress.

In 1968, the Office of Education sought and received an appropriation for another study which was conducted by the Battelle Memorial Institute in 1969. The legislative proposals submitted to the Congress in 1970 were, in part, based on recommendations included in the Battelle report.

Although no action was taken on the Battelle recommendations or on the bill submitted to the Congress by the Nixon Administration, some aspects of the 1974 revisions of section 3 of Public Law 874 have a vague resemblance to some of the Battelle recommendations.

6) The 1974 Amendments

In 1973, when the Congress began to consider legislation which became law as the Education Amendments of 1974, conflict existed between the Legislative Branch and the Executive Branch. In the field of education, this conflict had begun as early as 1966. As a result, members of Congress having responsibilty for education legislation had considerable experience in finding the means of forcing the Office of Education to carry out congressional wishes in spite of Administration policy to the contrary. This was done by legislating internal organization down to position descriptions; legislating mandatory budget requests; removing all discretion from the authority of administrators; legislating affirmative policy backed up with negatives and, in the alternative, penalties; and wrapping anti-Executive policies in mammoth bills in which they were difficult to find and which were designed to command two-thirds majorities--in case there was a veto.

The 1974 revision of Public Law 874 was developed in that atmosphere and was a central part of a major education bill which was facing veto. Because other parts of the bill were considered by some to be unfavorable to large cities, it was necessary to balance the bill by finding a means of insuring that the entitlements in Public Law 874 based on children from low-rent public housing were funded in the same manner as the other Impact Aid entitlements.

At the same time, long years of attacks on the Impact Aid Program had convinced some members of Congress that some reform of the program was necessary--reform which would cut down the cost of the program. In addition the jurisdictional conflict on the method of making payments under section 5(c) of Public Law 874 and the policy question regarding

State aid equalization concentrated enough difficult issues on Impact Aid to require a revision of sections 3 and 5 of the law.

Those who opposed Impact Aid most often attacked the program because it authorized payments to local educational agencies having wealthy school districts. Invariably the examples used were the school districts around Washington, D.C. For this reason, the congressional leaders favoring reform wanted to "do something" about the Washington suburbs.

The reform which was adopted may be described best in terms of the political objectives sought to be achieved: cost reduction, funding low-rent public housing entitlements, and jurisdictional control over the method of making payments. In addition, special consideration was given to the treatment of Indian children.

Cost Reduction. The cost reduction in the program was accomplished by revising sections 3(a) and 3(b) to create subcategories for describing the types of Federal connection of children who were to be counted for the purpose of computing the amounts to which local educational agencies were to be entitled. These subcategories were then tied individually to a specific percentage of the LCR under section 3(d), which percentage was intended to reflect an approximation of Federal burden borne by the local educational agency educating federally-connected children.

Whereas, under the previous law all children who lived on Federal property with a parent employed on Federal property were classified together, with the entitlement computed on the basis of 100 percent of LCR, the revised law created three subcategories with entitlements computed as follows:

(1) Children who live on Federal property and have a military parent form the basis of an entitlement computed at 100 percent of LCR.

(2) Children who live on Federal property with a parent employed on Federal property located in the same county as that in which the local educational agency is located form the basis of an entitlement computed at 90 percent of LCR.

(3) Children who live on Federal property with a parent employed on Federal property located in another county (but in the same State) as that in which the local educational agency is located form the basis of an entitlement computed at 90 percent of LCR.

Also, local educational agencies with "Super A" districts were given special recognition by providing that 100 percent of LCR would be used for computing the entitlement for all "A" children in their schools.

Whereas, under previous law all children who either lived on, or lived with a parent employed on, Federal property were classified together, with the entitlement computed on the basis of 50 percent of LCR, the revised law created four subcategories with entitlements computed as follows:

(1) Children with military parents form the basis of an entitlement computed at 50 percent of LCR.

(2) Children who live on Federal property form the basis of an entitlement computed at 45 percent of LCR.

(3) Children who live with a parent employed on Federal property in the same county as that in which the local educational agency is located form the basis of an entitlement computed at 45 percent of LCR.

(4) Children who live with a parent employed on Federal property in another county (but in the same State) as the local educational agency form the basis of an entitlement computed at 40 percent of LCR.

In addition to the reductions in percentage of LCR used in computing the amounts of entitlements noted above, the revision excluded from the count any children whose parents were employed on Federal property located in a State other than that in which the local educational agency was located.

Jurisdiction Over Method of Making Payments. Section 5(c) of Public Law 874 was revised by initiating a new approach to making payments when appropriations are insufficient to satisfy all entitlements. The new approach was designed to limit the discretion which could be exercised in the budgeting and appropriations process in determining the amounts to be applied toward partially satisfying entitlements. This new approach required that payments be made in three steps or "tiers":

> In Tier I, a uniform 25 percent of all entitlements were to be paid. In Tier II, varying percentages of entitlements were to be paid, in addition to the amounts paid under Tier I. These percentages ranged from 75 percent in the case of "Super A" districts down to 28 percent in the case of entitlements based on "out-of-county" "B" children. Entitlements based on children from low-rent public housing were excluded from payments under Tier II. No payments could be made under Tier II unless all payments under Tief I were made; and no payments could be made under Tier II unless all payments were paid under Tier II.
>
> In Tier III, any funds remaining were to be paid in partial satisfaction of unsatisfied entitlements in proportion to the extent that they were unsatisfied at the completion of payments under Tier II.

This rigid system of payments made almost mandatory appropriations at a level necessary to fund Tier II.

In order to protect against impoundments, the language of section 5 was drawn in such a manner as to be enforced by the anti-impoundment provisions in the General Education Provisions Act which, by that time, were known to be enforceable in the courts.

Low-Rent Public Housing. The 1970 amendments to Public Law 874 which added low-rent public housing property to the definition of "Federal property" also included a provision which distinguished low-rent public housing entitlements from other entitlements and required an earmarked appropriation for making payment on them. Through 1974, no appropriations had been made available for low-rent public housing.

The 1974 revision of section 5(c) removed that distinction, thereby requiring that low-rent public housing entitlements be funded at least at the Tier I level. Low-rent public housing was excluded in Tier II, but the effect of that exclusion was to double low-rent public housing allocations in Tier III. (Under Tier III low-rent public housing payments amounted to about 45 percent of any money paid out under Tier III, making Tier III funding very attractive to the large cities.) Funds paid for low-rent public housing entitlements were required to be spent on projects designed to meet the educational needs of educationally deprived children from low-income families--a limitation on the use of funds for which there was no precedent in Public Law 874. (This requirement was deleted in 1978.)

Treatment of Indian Children. Although previous law had, since 1958, included Indian children in the Impact Aid Program, they were treated in the same manner as all other federally-connected children--even though they had characteristics which were unique. They were generally "B" children because of their place of residence on reservations; and there was most often no place of non-Federal employment because their parents' livelihood was from farming, grazing, or otherwise working on reservations. Very little school revenue could be raised to support the cost of their education. In most respects the characteristics of Indian children resembled more nearly those of "A" children than those of "B" children.

The reductions in LCR effected in the revision of section 3(b) were found to be unjustified where they were applied to Indian children.

For this reason the 1974 revision of section 3(a) contained a provision which required that all children living on Indian lands be treated in the same manner as military "A" children, with the result that most school districts on or near reservations became "Super A" districts.

7) Implementation of the 1974 Amendments

The 1974 revision of sections 3 and 5 of Public Law 874 was probably the most extensive modification of that law to be enacted since the inception of the Impact Aid Program. The creation of the subcategories within section 3(a) and 3(b), the variable LCR in section 3(d), and the complex payments provisions in section 5(c) presented an already overloaded staff in the Division of School Assistance in Federally Affected Areas with the difficult problem of revising almost every form and procedure which had been used in the past.

Local educational agency officials across the country were confused by the changes and uncertain about their functions under the new law. There were new forms to submit and school budgets to put together under circumstances in which past experiences did not provide any guidance as to the amounts of Impact Aid payments which would be available in the next fiscal year.

This situation was complicated by the fact that the Administration, in its allocation of personnel and budgeting process for fiscal year 1976, ignored the 1974 amendments. The budget proposal submitted for that fiscal year was conceptually the same as that which had been submitted the previous year, making no acknowledgment of the changes in the law.

Appropriations were a problem. Even though the total of the entitlements had been reduced in the reform (by approximately $100 million from what they would have been without the reform), the mandatory funding level under the new tier system was to require approximately $200 million more than appropriations of the previous year. Cost estimates from the Administration were found to be so unreliable that those of the Library of Congress had to be used.

Even though the appropriations to fund Tier II were enacted, the appropriations committees were known to be unhappy about the strait jacket into which they had been thrust. Some members of those committees were very unhappy that they were forced to fund low-rent public housing entitlements for the first time, in a year during which they had hoped to fund no new programs. The natural tension which would arise from this situation developed and increased in the appropriations process during the next two years.

8) The 1978 Amendments

In 1977 and 1978, during the time when the legislation which became the Education Amendments of 1978 was being developed, there was a reaction against the mandatory funding requirements in the tier system. This issue came to a head on the Senate floor when the education bill was being considered.

The Chairman of the Senate Committee on Appropriations and some of the members of the Senate Budget Committee succeeded in amending the Senate bill with a view toward eliminating the mandatory nature of the tier system. Part of those amendments was the section which created the Commission on the Review of the Federal Impact Aid Program.

The final result of these amendments was a 35 percent reduction in the amounts to be paid under Tier II and the creation of a corresponding payment authority which would allow appropriations legislation flexibility in determining the amounts to be appropriated.

The Education Amendments of 1978 also created further distinctions in favor of "Super A" districts which lowered the eligibility for "Super A" status from 25 percent "A" children to 20 percent and provided for funding military "B" children entitlements in the same manner as such districts are funded for "A" children entitlements.

It was in this context that the Commission was created under section 1015 of the Education Amendments of 1978.

F. BASIC ELEMENTS OF THE IMPACT AID PROGRAM

Public Law 874, as amended, provides financial assistance to local educational agencies in federally-affected areas. Title I of the Impact Aid Program includes seven sections. Five of those sections authorize program assistance as follows:

Section 2 entitles a local educational agency to a payment where the Federal acquisition of real property results in a continuing and substantial financial burden.

Section 3 entitles a local educational agency to a payment for the costs arising from the children of parents who work and live on Federal property and for the the costs arising from the children of parents who work or live on Federal property.

Section 4 entitles a local educational agency to a payment in cases of certain sudden and substantial increases in school enrollment due to Federal activity.

Section 6 authorizes payments to Federal or other agencies on account of children for whom local school districts are unable or unwilling to provide a free public education.

Section 7 authorizes a payment to a local educational agency in the case of certain natural or other major disasters.

In addition to those five different authorizing sections, section 1 contains the declaration of policy for the Impact Aid Program, and section 5 specifies applications and payment requirements, including those affecting the distribution of available funds when appropriations are insufficient to pay in full entitled amounts. Section 5 also contains provisions regarding the treatment of Impact Aid payments under State laws for financing public education.

Title II, no longer part of Public Law 874, is now Title I of the Elementary and Secondary Education Act of 1965, which provides assistance for educationally disadvantaged children of low-income families. Title III, created by part A of the Indian Education Act, assists local educational agencies educating children residing on Indian lands. Title IV General Provisions defines terms used throughout Public Law 874.

Section 1. The declaration of policy set out in section 1 of Public Law 874 describes, in general terms, four types of activities which merit financial assistance to local educational agencies: (1) the acquisition of real property by the United States resulting in reduction in the revenue available to local educational agencies from local sources; (2) the education of children whose parents reside on Federal property;

(3) the education of children whose parents are employed on Federal property; and (4) Federal activities which cause a sudden and substantial increase in enrollment.

The policy statement describes the design of the law under which local educational agencies are compensated for two types of burden: (1) removal of real property from the local tax rolls, and (2) the cost of educating children who either live on Federal property or who are connected with a Federal activity.

Section 2. Local educational agencies are compensated under section 2 of Public Law 874 for the financial burden of ownership of property by the Federal Government in their district. Federal property is defined in the general provisions of Public Law 874 as: "any real property... owned by the United States or leased by the United States, and which is not subject to taxation by any State or by the District of Columbia." That definition includes property held in trust by the United States for individual Indians or Indian tribes and real property held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States. In addition, low-rent public housing is Federal property for the purposes of Impact Aid, as is any school providing flight training to Air Force members at a government-owned airport and tax-exempt property owned by a foreign government or by an international organization. Any interest in Federal property under an easement, lease, license, permit, or other arrangement is Federal property. Improvements of any nature other than pipelines or utility lines on Federal property are included, even if those improvements are taxable by the State or locality. Thus it is the tax-exempt status of property, rather than who owns it, which triggers special treatment under Impact Aid.

Under section 2, a local educational agency is entitled to compensation if the Secretary determines that in any fiscal year ending prior to October 1, 1983:

(1) the United States owns property in the school district of the local educational agency, acquired after 1938:

(a) which it acquired other than by an exchange for other Federal property in the school district owned by the United States before 1938;

(b) which also had, at the time of its acquisition, an assessed value of ten percent or more of the assessed value of all real property in the school district;

(2) the acquisition placed a substantial and continued financial burden on the local educational agency; and

(3) the local educational agency is not being substantially compensated for the loss in revenue from Federal ownership by increases in

revenue from Federal activities carried on with respect to the Federal property.

Applicants under section 2 receive priority when insufficient appropriations must be allocated among applicant local educational agencies; they are paid 100 percent of their entitlement under section 5(c) of the law.

The history of eligible local educational agencies, and their entitlements and payments under section 2, is as follows:

FISCAL YEAR	NO. OF ELIGIBLE LEA APPLICANTS	ENTITLEMENT	NET PAYMENT
1979	unavailable	$12,065,981	$12,065,981
1978	249	11,552,393	11,552,393
1977	231	9,807,997	9,807,997
1976	243	11,955,080	7,651,250
1975	201	7,616,594	7,615,674
1974	179	7,865,267	7,865,267
1973	158	7,258,247	7,258,247
1972	153	6,243,205	6,243,205
1971	147	3,975,868	3,975,868
1970	132	3,673,827	3,673,827
1969	108	3,747,694	3,747,694
1968	98	3,295,361	3,295,361
1967	108	2,691,613	2,691,613
1966	99	2,427,788	2,427,788
1965	95	1,699,765	1,699,765
1964	89	1,523,580	1,523,580
1963	81	1,486,359	1,486,359
1962	78	1,250,065	1,250,065
1961	73	797,165	797,165
1960	57	603,264	603,264
1959	55	556,667	556,667
1958	48	498,139	498,139
1957	45	357,531	357,531
1956	37	319,433	319,433
1955	32	323,541	323,541
1954	33	259,780	259,780
1953	28	243,561	243,561
1952	25	319,844	319,844
1951	28	222,193	222,193

Source: Compiled from Division of School Assistance in Federally Affected Areas (SAFA) data.

Section 3. Section 3 of Public Law 874 authorizes payments to local educational agencies on the basis of entitlements for children of parents who either work on or live on Federal property or both. The kinds of connections a child may have with the Federal Government determine the burden imposed by the Federal Government on the locality and consequently the amount of compensation. These children are classified under two broad categories: 3(a), those living on Federal property with parents who also work on Federal property ("A" children), and 3(b), those living with parents who either work or live, but not both, on Federal property ("B" children).

"A" children have a double Federal connection--the child's parent both lives and works on Federal property--and the federally-imposed burden is presumed greater than that of children whose parents live or work on, but not both, Federal property. For this reason, local educational agencies are compensated more per child for "A" children than for "B" children. Children are either military or non-military; for children of parents on active duty in the military services, local educational agencies receive more Federal compensation than non-military "A's." Children residing on Indian lands are classified as military "A's" for the purpose of determining entitlements. Non-military "A's" are further divided into two categories: (1) children whose parents work on Federal property located in whole or part in the same county in which the local educational agency applying for Impact Aid is situated and (2) children whose parents work on Federal property located in whole or in part in the same State as the school district of the applicant local educational agency. Local educational agencies are compensated at the same rate for both types of non-military "A" children.

There are three main categories of "B" children: (1) those living with parents who reside on, but do not work on, Federal property; (2) those living with a parent working, but not living on Federal property; and (3) those having a parent on active duty in the military. Children residing with a parent employed on, but not living on, Federal property are further divided into two types: (a) those with a parent working on Federal property located in whole or in part in the same county as that in which the school district of the applicant local educational agency is located and (b) those with parents working on Federal property, though not in the same county, located in whole or in part in the State as the school district of the applicant local educational agency.

Included in a count of "B" children are those in average daily attendance for whom a school provides a free public education, and living with a parent who was, at any time during the three year period preceding the fiscal year of application, a refugee meeting the requirements of the Migration and Refugee Assistance Act of 1962 which provides assistance for Cuban refugees.

Local educational agencies are eligible to receive section 3 assistance if they enroll at least 400 federally-connected children or have at least three percent of their enrollment comprised of federally-connected children. In any case, a local educational agency must have at least ten federally-connected children. The law provides two exceptions to the three percent rule: (1) there is a gradual reduction of payments over two years if a local educational agency fails to meet the three percent requirement in one year, having been eligible the preceding year, and (2) the Secretary is authorized to waive the three percent requirement if imposing it would defeat the purpose of the Impact Aid law.

A special, more stringent eligibility requirement exists for local educational agencies basing entitlements on children of Cuban refugees. In those schools, refugee children must constitute at least 20 percent of the total number of children in average daily attendance.

Section 3 contains a special provision for local educational agencies with an enrollment of which federally-connected children constitute 50 percent. Those local educational agencies, frequently referred to as "3(d)(2)(B)'s," receive an increased entitlement under section 3(d)(2)(B) if the original entitlement, plus State and local contributions to the local educational agency, is less than required to enable it to provide a level of education equivalent to that maintained in comparable local educational agencies.

A history of entitlements and payments made to eligible local educational agencies under section 3 follows:

FISCAL YEAR	NO. OF ELIGIBLE LEA APPLICANTS	ENTITLEMENT	NET PAYMENT
1979	unavailable	$1,187,005,793	$661,048,926
1978	4,340	1,046,802,168	663,072,087
1977	4,340	1,045,396,157	622,781,943
1976	4,111	988,944,919	582,026,001
1975	4,301	972,383,406	557,055,049
1974	4,363	981,525,733	518,052,851
1973	4,426	1,017,741,753	516,131,625
1972	4,600	505,345,548	540,483,146
1971	4,627	482,941,412	491,503,087
1970	4,519	553,438,060	470,713,713
1969	4,325	513,489,448	467,836,919
1968	4,149	460,330,961	449,591,625
1967	3,836	382,825,442	386,476,970
1966	4,040	345,506,305	344,376,115
1965	4,071	307,611,962	296,677,846
1964	4,075	280,611,457	274,524,892
1963	4,072	256,129,584	246,381,411
1962	3,972	230,451,924	222,652,476
1961	3,897	201,185,020	195,058,190
1960	3,775	175,301,941	173,374,094
1959	3,736	147,294,381	147,230,438
1958	3,326	116,068,770	116,184,362
1957	3,300	104,790,053	104,785,040
1956	2,806	76,930,644	76,930,928
1955	2,631	67,114,248	66,745,336
1954	2,445	64,152,852	64,152,852
1953	2,157	49,271,703	49,271,703
1952	1,722	39,292,144	39,284,743
1951	1,109	23,421,452	22,236,991

Source: Compiled from SAFA data.

Section 4. Section 4 provides for increased payments to local educational agencies experiencing sudden and substantial increases in enrollment caused by increased Federal activities. The additional children may, but need not, be "A" or "B" children.

A local educational agency is entitled to an increase in payment if the following three facts are present:

(1) the Secretary finds, on the basis of estimates made in the previous year, that Federal activities have caused increases in average daily attendance in the local educational agency amounting to at least five percent of the difference between the number of children in average daily attendance during the preceding fiscal year and the number of children whose attendance that year resulted from Federal activities;

(2) those Federal activities have placed a substantial and continuing financial burden on the local educational agency; and

(3) the local educational agency is making a reasonable tax effort and is, with due diligence, seeking State and other financial assistance, but cannot find funds sufficient to meet the increased costs of educating the federally-connected children.

If a local educational agency satisfies these three requirements, it is entitled to receive an amount equal to the cost of educating the additional federally-connected children, minus funds from other sources available for their children.

Section 4 also makes provision for local educational agencies which have made preparations to provide free public education to an additional number of children due to an increase in Federal activities and there is a decrease in enrollment because Federal activities decrease, cease, or fail to occur. In such cases, the local educational agency receives the amount to which it is otherwise entitled under this section, increased by the amount the Secretary judges it would have been entitled to but for the decrease in Federal activities, minus any reduction in current expenditures in that year the Commissioner determines the local educational agency has, or reasonably should have, experienced because of the decrease in Federal activities.

A history of section 4 entitlements and payments made to eligible local educational agencies follows:

FISCAL YEAR	NO. OF ELIGIBLE LEA APPLICANTS	ENTITLEMENT	NET PAYMENT
1979*	0	0	0
1978*	0	0	0
1977*	0	0	0
1976*	0	0	0
1975*	0	0	0
1974*	0	0	0
1973	1	131,642	131,643
1972	3	47,006	47,006
1971	5	23,392	23,392
1970	8	77,940	77,940
1969	7	725,177	725,177
1968	3	1,085,316	1,085,316
1967	16	1,659,663	1,659,663
1966	13	2,274,852	2,274,852
1965	10	1,905,424	1,905,424
1964	9	1,640,020	1,640,020
1963	12	1,479,549	1,479.549
1962	9	1,551,739	1,551,739
1961	6	982,640	982,640
1960	17	1,651,375	1,651,375
1959	35	1,814,819	1,814,819
1958	2	14,356	14,356
1957	86	908,911	908,911
1956	146	3,617,397	3,617,397
1955	189	4,168,771	4,168,771
1954	149	4,658,500	4,658,500
1953	145	5,085,638	5,085,638
1952	133	5,414,160	5,414,160
1951	122	5,967,393	5,967,393

* There have been no payments under section 4 since 1973.

Source: Compiled from SAFA data.

Section 5. Section 5 specifies application and payment requirements, including those affecting the distribution of available funds when appropriations are insufficient to pay all entitlements in full. Section 5 also contains provisions regarding the treatment of Impact Aid payments under State school finance plans.

When appropriations in any year are insufficient to satisfy the entitlements of all eligible local educational agencies fully, payments are reduced according to a schedule set out in section 5(c) whereby payments are authorized in three "tiers":

Tier I. Twenty-five percent of entitlements under sections 3(a) and 3(b); 100 percent of entitlement under section 2.

Tier II. After, and only if, the amounts authorized in Tier I are fully paid, the remaining funds are allocated on a graduated scale designed to set out priorities among local educational agencies and categories of children, to wit:

- 60.93 percent of entitlement to local educational agencies providing education for children residing on Indian lands;
- 48.75 percent of entitlement to local educational agencies receiving an increase under section 3(d)(2)(b) (heavily impacted school districts);
- 48.75 percent of entitlement to local educational agencies having "Super A" children and military "B's";
- 42.25 percent of entitlement to local educational agencies having military "A's";
- 36.85 percent of entitlement to local educational agencies having non-military "A's";
- 11.375 percent of entitlement to local educational agencies having military "B's" other than those in local educational agencies having "Super A" children;
- 9.36 percent of entitlement to local educational agencies having "B" children connected with Federal property situated in whole or in part in the same county or school district as the local educational agency applying for Impact Aid;
- 7.28 percent of entitlement to local educational agencies having "B" children connected with Federal property located in whole or in part in the same State as the local educational agency.

This schedule of payments constitutes the first part of Tier II. The second part of Tier II allocates any remaining funds, after the first part is paid, by:

- insuring local educational agencies 90 percent of their previous year's payment, and
- allocating any amount remaining in accordance with appropriation acts.

Tier III. If more funds become available after sums are allocated pursuant to the appropriations acts, a third tier of payments provides a *pro rata* payment of these funds to local educational agencies on the basis of their unsatisfied section 3 or section 4 entitlements.

Impact Aid and State Aid. Section 5(d) establishes rules governing the relationship between Impact Aid payments to local educational agencies and payments to those local educational agencies under programs of State aid for public education. No payments under the Impact Aid Program may be made to any local educational agency in a State if that State, in its State aid program, takes into consideration the payments to any local educational agency under the Impact Aid Program.

The exception to this rule is that a State may take Impact Aid payments into consideration when determining the local educational agency's financial resources and needs if it has a program to equalize expenditures for public education throughout the State. However, whenever a State or local educational agency will be adversely affected by the requirement that a State can take Impact Aid payments into consideration only if the State has a valid equalization plan, the local educational agency will be afforded notice and opportunity for a hearing prior to reduction or termination of Impact Aid payments.

Section 5(d)(2) of the statute provides that "equalize expenditures" shall not be construed to affect adversely programs of State aid for free public education for the handicapped, bilingual education, education for the economically disadvantaged, or education of the gifted or talented; thereby a State is not penalized for weighting the cost of providing these educational programs.

The statute further provides that the State may consider Impact Aid payments as local resources only in proportion to the share that local revenues covered under a State equalization plan make up of total local revenues.

Section 5(d) also provides that if a State desires to take payments under that section into consideration for any fiscal year, that State is, not later than sixty days prior to the beginning of that fiscal year, to submit notice to the Secretary of its intention to do so. This notice is to enable the Secretary to determine the extent to which the program of State aid of that State is consistent with the equalization provisions of section 5(d). In addition, local educational agencies within that State must have been given notice of the intention of the State. If the Secretary determines that the program of State aid of a State so submitting notice is consistent with those provisions, the Secretary is to certify that determination to that State.

Section 6. Section 6 allows the Federal Government to provide a free public education for children residing on Federal property or who are children of active duty members of the Armed Forces.

For children residing on Federal property, the Secretary is authorized to make these arrangements only if: (1) no tax revenue of the State, or its political subdivision, may be spent to educate those children; or (2) after consultation with the State education agency, the Secretary concludes that no local educational agency is able to provide a suitable free public education for those children.

For children of active duty members of the Armed Forces, the Secretary is authorized to make these arrangements only if: (1) the schools in which a free public education is usually provided for those children are made available to them by official action of a State or local governmental authority; or (2) after consultation with the State education agency, the Secretary concludes that no local educational agency is able to provide a suitable free public education for those children.

Under certain circumstances, the Secretary may arrange to provide a section 6 education for children residing in the area adjacent to Federal property who had a parent employed on that property during some part of the fiscal year during which the education is provided. The Secretary may do so only if, after consultation with the State education agency, he determines that (1) providing such an education is appropriate to carrying out the purposes of Impact Aid; (2) no local educational agency can provide a suitable free public education to such children, and when the need for such education is not temporary; and (3) the local educational agency or State education agency, or both, will make reasonable tuition payments to the Secretary for educating such children.

The following is a history of payments and entitlements under section 6 for all eligible applicants, including the number of eligible local educational agency applicants.

FISCAL YEAR	TOTAL ELIGIBLE APPLICANTS	ELIGIBLE LEA APPLICANTS	ENTITLEMENT	NET PAYMENT
1979	22	*	$45,896,644	$45,896,644
1978	23	5	56,810,667	57,644,800
1977	25	5	52,455,720	52,386,927
1976	25	4	45,958,960	45,866,899
1975	25	4	42,962,308	42,675,678
1974	25	3	39,472,714	39,082,248
1973	28	8	41,500,000	39,041,117
1972	29	8	36,208,672	36,208,672
1971	30	7	34,028,405	34,028,405
1970	32	7	29,972,946	29,972,946
1969	47	17	28,892,668	28,892,668
1968	48	18	26,028,300	26,028,300
1967	48	16	22,620,411	22,620,411
1966	52	20	20,072,416	20,072,416
1965	54	22	18,974,472	18,974,472
1964	55	22	17,005,165	17,005,165
1963	61	21	15,016,054	15,016,054
1962	56	22	13,221,781	13,221,781
1961	56	22	11,406,026	11,406,026
1960	45	13	9,191,907	9,191,907
1959	33	2	7,249,346	7,249,346
1958	32	1	5,682,664	5,682,664
1957	32	3	5,268,394	5,268,394
1956	35	4	4,797,499	4,797,499
1955	*	*	3,670,283	3,670,283
1954	24	5	2,788,955	2,788,955
1953	*	*	3,095,690	3,095,690
1952	*	*	2,788,034	2,788,034
1951	*	*	75,000	75,000

* Data unavailable.

Source: Compiled from SAFA data.

Section 7. Section 7 authorizes assistance to local educational agencies suffering damage from disasters, if four conditions are met: (1) the school facilities of the local educational agency must have been destroyed or seriously damaged as the result of a catastrophe; (2) the Governor of the State in which the local educational agency is located must have certified the need for disaster assistance and assured reasonable State assistance; (3) the Secretary must have determined that the agency experiencing the disaster is using or will use all State and other financial assistance available to it for providing a free public education to children attending the damaged schools but because of the disaster cannot obtain sufficient funds; and (4) the local educational agency must have provided for conducting educational programs under public auspices for private school children whose education programs are disrupted by the disaster if the disaster is extensive enough to have impaired private education.

Section 7 further authorizes the Secretary, pending appropriations, to spend any funds available to him necessary for immediate disaster assistance. The Secretary must report any expenditure pending appropriation in the form of a budget estimate to the House Appropriations and Education and Labor Committees and the Senate Appropriations and Labor and Human Resources Committees within 30 days of the expenditure. These expenditures will be reimbursed from forthcoming section 7 appropriations.

CHAPTER II

EVALUATION METHOD

A. THE USE OF A PRESIDENTIALLY APPOINTED COMMISSION TO EVALUATE AN EDUCATION PROGRAM

The Commission is a 10-member presidentially appointed panel, charged with the responsibility for evaluating the operation and administration of a major education program. The Commission is carrying out its mandate by conducting its evaluation directly, using Federal employees and procedures, rather than contracting with an experienced organization not bound by normal Federal procedures.

1) Direct Evaluation Rather Than Evaluation by a Contractor

When the Commission was originally established, the HEW administrators in charge had assumed that the study would be conducted under private contract. Cost estimates set out in its charter were based upon that assumption. The two previous studies of Impact Aid were conducted through contracts with private organizations. Therefore, the Chairman of the Commission and the temporary executive director, upon their appointment and designation, explored the possibility of contracting the current study. It was discovered that contracting procedures would require several months before the study could begin--as long as eight months--and that once a contract had been let the degree of day-to-day control of the work done by the contractor would necessarily have been limited by the nature of the contract. It was also found that contracting would probably be more expensive than a direct evaluation.[2/]

In addition, it was thought that contracting the study would be inconsistent with the use of a multi-member Commission, appointed by the President, to study an established, politically sensitive education program.

The alternative to the contracting approach was to conduct the study with the authority available to the Commission under the law.

2) Authority for, and Procedures for, Direct Evaluation

The law relevant to conducting the study directly was that contained in part D of the General Education Provisions Act (the so-called "Education

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[2/] When the Commission was originally established, the Department estimated its costs for fiscal year 1980 to be $575,000. The actual expenditure for fiscal year 1980 was $447,000.

Advisory Council Code" (EACC)).[3] Provision for hiring staff to assist the Commission in conducting the study is made in section 445 of the EACC. Section 445 contains the authority for education advisory councils to obtain the services of staff. That authority is set out in subsections (a), (c), and (d) of section 445 of the General Education Provisions Act which provide, in part:

> (1) that the Commission is authorized to appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, or otherwise obtain the services of, such professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions, as prescribed by law; and
>
> (2) subject to the regulations of the Secretary of Education, that the Commission is authorized to procure temporary and intermittent services of such personnel as are necessary to the extent authorized by section 3109 of title 5, United States Code, but at rates not to exceed the rate specified at the time of such service for grade GS-18 in section 5332 of such title; and
>
> (3) that no employee of the Commission may be compensated at a rate in excess of that which such employee would receive if such employee were appointed subject to the appropriate provisions of title 5, United States Code, regarding appointments to, and compensation with respect to, the competitive service, except that --
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>> (a) the executive director of the Commission is to be compensated at the rate specified for employees placed in grade 18 of the General Schedule set forth in section 5332 of such title 5; and
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>> (b) in accordance with regulations promulgated by the Secretary, other employees of the Commission are to be compensated at such rates as may be necessary to enable the Commission to accomplish its purposes.

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[3] Section 1015(c)(2) of Public Law 95-561 provides that, to the extent that part D of GEPA is not inconsistent with the provisions of such section 1015, such part D applies to the Commission. Part D of GEPA was designed to provide uniform law and procedures for education advisory councils. For councils having members appointed by the President, part D provides, and the Comptroller General has determined, that a great deal of independence vests in the appointed body itself. Therefore, the administrative provisions of part D would appear, in general, to be appropriate for a Commission mandated to study, independent of Executive Branch control, an education program of the type that Impact Aid is.

The Commission is an independent establishment in the Executive Branch not part of any other agency.[4] Even so, under the law, the Commission was attached to the Committee Management Staff of the Department and bound by the rules and procedures normally governing advisory committees on education programs. The administrative services for the Commission were to be provided by the Office of Education (and its successor the Education Department, hereafter referred to as the "Department").

The use of a multi-member Commission with Federal employees to evaluate an established education program is unusual, if not unique. In fact, the Commission has found no precedent for it. For this reason, the Commission includes in this report a discussion of this method of conducting research. Should the Congress decide to use this method of conducting a research study on another program or subject, some of the lessons learned by this Commission may be helpful.

The Commission has determined that it is possible to conduct an unbiased, academically sound, yet politically sensitive study, using Government employees and procedures. The Commission, as an independent establishment in the Executive Branch, has, under existing law, sufficient independence with respect to direction, purpose, and policies, to conduct an unbiased study.[5] The same cannot be said with respect to the administrative procedures set up by the Department in compliance with that law.

The duration of the Commission was limited; therefore, its employees had temporary appointments. The time during which its task was to be completed was short, requiring that the normal administrative processes governing the departmental program administration be modified for expeditious action. Because of the nature of the work to be accomplished, personnel classification standards had to be modified from those governing program administration to those necessary for a study of the type mandated by the Congress.

The normal procedures used by the Department for hiring employees and procuring supplies and services have not been well-suited to the needs of the Commission. Most important among those needs has been the

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4/ This statement is supported by the reasoning and conclusions set out in an opinion of the Comptroller General when questions were raised concerning the status of a body similar to the Commission. (Decision of the Comptroller General of the United States. File B-179188, January 31, 1974 and April 15, 1976.)

5/ At the time of this report there are substantial questions regarding what existing law is applicable to the Commission. If it is found that the provisions of the Federal Advisory Committee Act apply, in full, the statement above would probably not be true.

ability to find qualified personnel who are willing to take temporary appointments at Government salary levels with none of the normal benefits which accrue with permanent appointments. Almost as important has been the need to procure meeting space, supplies, and expert services in accordance with the schedule set out in the Plan of Study adopted by the Commission. Because the Department is designed to administer programs, rather than to conduct short term projects, the administrative services of that Department, and the procedures for the use of those services, have not lent themselves well to the needs of the Commission.

Sixty days is the normal minimum time for accomplishing many administrative actions in the Department--creating and filling positions, getting approval for services, and renting meeting space. Longer periods of time are necessary for contracts and obtaining the temporary services of experts. This Commission has had to forego activities requiring the services of experts and the use of contracts simply because the time necessary to get approvals through the Department was greater than that allowed under its mandate.

The major activities foregone were two important studies concerning major aspects of the Impact Aid Program:

(1) a comparison of the relative benefits of Title I of the Elementary and Secondary Education Act of 1965 with those of payments based on entitlements under the Impact Aid Program which arise from low-rent public housing property; and

(2) the relationship between Impact Aid and State aid for public education.

In each of these cases delays of, and in some cases exceeding, three months in arranging for contracts and experts made completion of adequate studies impossible and, had an attempt to conduct them been made, inefficient expenditure of Commission funds might have resulted.

There is no comprehensive document or set of documents which delineate the authority of Presidential advisory councils, staffing procedures, a description of their administrative responsibilities, or a statement describing the relationship between the Department and those councils.

As a result, the Commission has had to operate by trial-and-error on contracts, on personnel, on travel, on requisitions, and on supplies. The staff has not been able to give the Commissioners definitive answers on the days for which they are entitled to be paid or by what authority their salaries are set. The staff has had no guidance as to what are eligible expenditures from Commission funds.

The most serious problem in conducting a study under Federal laws is the appointment and compensation of qualified staff. As of the date of this report, the Commission has not been able to obtain from the Department a concise body of rules and procedures governing the rights and privileges of temporary staff. These rules and procedures have had to be discovered on a case-by-case basis and they appear to have no consistency. Some of the Commission employees have retirement and health benefits, and others do not. Some appear to be eligible for quality step increases, and others are not--without regard for the merits of their work. This has been the case even though section 445 of the GEPA explicitly gives controls over this matter to the Commission.

A study of the type required by this Commission requires the use of dedicated employees with good morale. This is difficult to achieve when they have questionable status in the bureaucratic establishment as is the case with temporary appointments.

B. METHOD OF GATHERING RELEVANT INFORMATION

The Commission, at the First Meeting, decided that the nature of the Commission's structure was such that conduct of public hearings as a means of gathering evidence was the best approach. This approach was to be supported by a research staff.

Central to this study has been a carefully coordinated combination of gathering evidence through both public hearings and in-house research by the staff of the Commission, with a view toward balancing out weaknesses inherent in both approaches.

The public hearings were designed to elicit the views of all interested parties, Federal agencies, and experts in whatever form is most convenient to them, while the staff research plan has been designed to provide a theoretical and analytical framework for organizing and understanding the evidence gathered through the hearing process.

The research staff provided the necessary support activities for the Commissioners during the hearing process and attended those hearings. The in-house research included statistical data, legal research, the study of school finance laws, economics, and an extensive review of the underlying premises of the Impact Aid Program and their present validity.

All of the information available indicated that the primary questions to be raised would, in some way, revolve around these issues:

(1) Is there a Federal burden imposed by Federal activities on local educational agencies; if so, what is the burden, and is there an obligation to compensate local educational agencies for that burden?

(2) Does the economic benefit of Federal activities compensate for the burden imposed? (Is there a net economic burden?)

(3) How should Impact Aid funds be allocated, taking into consideration the fact that some heavily impacted local educational agencies are almost absolutely fiscally dependent upon payments under the program and the fact that appropriations have fallen short of the levels necessary to satisfy entitlements?

These three questions matched up with two of the three specific charges given the Commission: that the Commission review and evaluate --

> (1) the equity of the present funding structure under Public Law 874,
> (2)***
> (3) the ways in which districts of local educational agencies which are Federally impacted can best be assisted in meeting their educational needs.[6]

At the same time the staff was developed around three areas of research which also matched the three questions:

(1) Legal and factual research on the nature of the Federal burden on local educational agencies;

(2) Economic analysis of the economic effect of Federal activities on financing the schools of federally-affected local educational agencies; and

(3) Public school finance.

Accordingly, the information was organized around the following questions (which also form the framework of the Commission's recommendations):

(1) Should the Impact Aid Program be continued?

(2) Should there be basic changes in the Impact Aid Program?

(3) How should the term "Federal property" be defined?

(4) What is the obligation of the Federal Government with respect to the education of children connected with Federal property?

(5) Should local educational agencies educating children in attendance at public schools by reason of Federal law or activities be compensated therefor?

6/ Clauses (1) and (3) of section 1015(b) of Public Law 95-561.

(6) Which local educational agencies should be eligible for Impact Aid payments?

(7) What should be the amount of compensation?

(8) How should funds be allocated among local education agencies when appropriations are insufficient to satisfy all entitlements? and

(9) Should the States take Impact Aid payments into consideration in their State aid programs?

C. METHOD OF REVIEW AND EVALUATION

Any evaluation must have a guideline by which the thing evaluated is to be measured. Some value judgment must be made as to what relevant basic principle has such overriding importance that it can be used to provide a base line for considering the merits of all aspects of the thing evaluated. That judgment is made by the creator of the evaluating instrument--in the case of this Commission, the Congress.

In two previous cases the Congress provided for studies of the Impact Aid Program; and in each case the study was contracted to be done by professional research organizations.

(1) The first study[7] was a highly technical attempt to measure burden and the just amount of compensation. The basic premises of the program were examined and accepted and based upon those premises a precise measure of burden was attempted.

(2) The second study[8] accepted the fact that local educational agencies were receiving Impact Aid funds and concentrated on alternatives to the then current program and on fairness within the program.

In addition, an internal evaluation of the Impact Aid Program[9] by the Department of Health, Education, and Welfare used, as a central evaluative principle, the reduction of the costs of the program.

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[7] Stanford Research Institute, 89th Congs., 1st Sess., Impacted Areas Legislation Report and Recommendations, Senate Subcommittee on Education of the Committee on Labor and Public Welfare (1965 Comm. Print).

[8] Battelle Memorial Institute, 91st Cong., 2d Sess., School Assistance in Federally Affected Areas: A Study of Public Laws 81-874 and 81-815, House Committee on Education and Labor (1970).

[9] Lawrence L. Brown, III, Alan L. Ginsburg & Martha Jacobs, Impact Aid Two Years Later, An Assessment of the Program as Modified by the 1974 Education Amendments (1978).

For this study the Commission sought an evaluative principle. The legislative history of the creation of the Commission indicates that the Congress wanted to know the extent to which payments under the Impact Aid Program are still valid expenditures in light of the budgetary constraints under which the Congress was operating. There appears to have been little question about the validity of the principles and assumptions upon which the original program was based in 1950.

On the basis of this legislative history two principles could be used in the evaluation of the program:

(1) Accepting the validity of the principles and assumptions of the original Act of Congress authorizing the Impact Aid Program, have circumstances so changed as to defeat their validity at this time?

(2) To what extent do budgetary constraints constitute changed circumstances which bring into question the validity of those principles and assumptions?

The second of the two--budgetary considerations--affected the scope of the study, involving subjects and issues beyond the scope of the mandate given the Commission by the Congress, yet not clearly excluded from that mandate.

For this reason, the staff, in its report to the Commission, submitted April 22, 1980, asked the Commission for guidance as follows:

> Scope of the Study. Should budgetary considerations be weighed against all of the evidence and all of the issues, or should those budgetary considerations be used only as a means of allocating appropriations within the Impact Aid Program? In other words, should the evidence be considered to address weighing expenditures for Impact Aid against other needs for the Federal dollar, for example, for defense?

In the policy findings adopted in its Interim Report, the Commission made the following findings:

> (1) that budgetary considerations are political questions which change from year to year, based on many factors beyond the scope of this review and evaluation of the Impact Aid Program;
>
> (2) the degree to which Federal activities constitute a burden on local educational agencies is relatively constant over the years and can be determined based upon factors within the scope of this review and evaluation;

(3) that budgetary considerations are not relevant to determining the magnitude of burden placed upon local educational agencies;

(4) that budgetary considerations, if they are to be a factor in the amounts paid to local educational agencies, should bear on determining the overall levels of appropriations for the program, and

(5) that, if those levels of appropriations are insufficient to compensate local educational agencies for the burdens placed upon them, the funds appropriated for the program should be allocated within the program on the basis of priorities which take into consideration the magnitude of the types of such burdens.

These findings on assessing the evidence were reiterated at the Fifth Meeting with a policy decision by the Commission and at the Sixth Meeting with a policy finding upon which recommendations were to be based as follows:

(1) that budgetary considerations are political questions which change from year to year, based on many factors beyond the scope of this review and evaluation of the Impact Aid Program;

(2) that the degree to which Federal activities constitute a burden on local educational agencies is relatively constant over the years and can be determined based upon factors within the scope of this review and evaluation;

(3) that budgetary considerations are not relevant to determining the magnitude of burden placed upon local educational agencies;

(4) that budgetary considerations should not be a factor in determining the level of appropriations for the Impact Aid Program unless there is a general policy in favor of reducing expenditures by the Federal Government and, when there is a determination of the level of appropriations under such circumstances, the Government's obligation to local educational agencies should be a primary factor and this program should receive a high priority level;

(5) that budgetary considerations, if they are to be a factor in the amounts paid to local educational agencies, should bear on determining the overall levels of appropriations for the program; and

> (6) that, if those levels of appropriations are insufficient to compensate local educational agencies for the burdens placed upon them, the funds appropriated for the program should be allocated within the program on the basis of priorities which take into consideration the magnitude and the nature of such burdens.*

Even though the Education Department did not raise directly the issue of Impact Aid payments to "wealthy" local educational agencies, some have argued that the program is inequitable because Impact Aid is available to local educational agencies in the districts of which reside affluent persons and those having districts in which property values are above the national average.[10] Relative wealth is a factor in evaluating programs in which relative need is a policy in distributing scarce resources. This type of policy necessarily is based upon budgetary concerns and considerations which the Commission determined to be more nearly relevant to priorities in distributing funds when appropriations are insufficient to satisfy entitlements than to a measurement of burden. For this reason relative wealth was not a policy factor in determining whether a Federal burden exists.

With the exclusion of budgetary constraints as an evaluative principle, the historical approach inherent in the first principle became the basis for the assessment of the evidence.

In enacting the original Public Law 874, the Eighty-first Congress operated on two assumptions:

> (1) that the education of children whose attendance in the schools of a local educational agency was the result of Federal activities was a burden on those agencies; and
>
> (2) that the exemption of real property by the Federal Government constituted a burden on local educational agencies dependent upon real property taxes for their local operating revenues.

The major argument advanced against these assumptions has been (1) that an assessment of the cost of educating federally-connected children and the loss of revenue due to the federally-caused tax-exempt status of real property is not a true assessment of burden since there are economic benefits to communities arising from Federal activities, and (2) that, if those benefits do not accrue to federally-affected local educational agencies, there are defects in State and local school financing laws which do not make those benefits available to those local educational agencies.

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[10] *Id.* 43.

The second of these arguments raised a policy question regarding whether the recommendations of the Commission should include changes in State and local laws. On this issue, the staff, in its report to the Commission on April 22, raised the following question:

> State and Local Laws. How should evidence which presumes that the States and localities should change their laws be considered? Most of the evidence in favor of the program is based on an assumption by the witnesses that State laws are not going to change to take advantage of the economic benefits of a Federal presence, while the evidence available which could be used to support the contention that there is a net economic benefit is valid only if the States change their laws.

The Interim Report, adopted on that day, contained the following findings:

> (1) that if there are net economic benefits to the affected localities, the revenues from those benefits are primarily in the form of income and sales taxes imposed and used by State government and local units of general government, rather than by local educational agencies;
>
> (2) that those revenues can only become available to local educational agencies through substantial changes in State laws which would affect fiscal independence of those agencies;
>
> (3) that Federal policy should be neutral with respect to the relationship between the States and their subdivisions and with respect to fiscal independence of local educational agencies; and
>
> (4) that the policy in favor of treating the Federal Government, to the extent practicable, as a private owner is sound and should be continued.

These findings were reaffirmed, in a modified form, at the Fifth Meeting, and further modified and adopted, at the Sixth Meeting, as policy findings upon which recommendations were to be developed as follows:

> (1) that, if there are net economic benefits to the affected localities, the revenues from those benefits are, except in the case of taxes on the net increase in property values caused by Federal activities, primarily in the form of income and sales taxes imposed and used by State government and local units of general government, rather than by local educational agencies;

(2) that those revenues can only become available to local educational agencies through substantial changes in State laws which would affect fiscal independence of, and control over, those agencies;

(3) that Federal policy should be neutral with respect to the relationship between the States and their subdivisions and with respect to fiscal independence of local educational agencies;

(4) that the policy in favor of treating the Federal Government, to the extent practicable, as a private landowner, under the school finance laws of the States, is sound and should be continued;

(5) that the economic benefits private land owners confer on localities do not relieve those land owners of their responsibility for real property taxes, although some local governments do give limited tax relief to owners of some commercial property in consideration of the economic benefit derived from the use of that property; and

(6) that increases in revenues from income and sales taxes resulting from Federal activities are not a relevant consideration when determining the degree of burden placed upon a local educational agency by Federal ownership and use of real property but may be relevant in computing the amount of compensation for that burden to that agency when it is determined that those revenues are a fiscal benefit to that agency.

With these policies, regarding the scope and principles to be used in making recommendations, in place, the Impact Aid Program and each of the components of the program could be evaluated in accordance with the following questions:

(1) What was the original premise underlying the program and each component thereof?

(2) What were the circumstances surrounding that original premise?

(3) Were the assumptions upon which the original premise was based valid?

(4) What circumstances affecting the validity of that premise have changed?

(5) Have those circumstances so changed as to affect the validity of the premise?

(6) Is the original premise still valid?

(7) If so, what modifications in the program are necessary to reflect more accurately the policy implications of that premise?

(8) If the premise is no longer valid, what changes are necessary?

It was with this approach the first evaluation was made: should the program continue?

The Impact Aid Program was based on the assumptions that --

(1) Federal property is exempted from taxation by State and local governments, under the Constitution;

(2) the tax-exempt status of Federal property deprives local governments, which rely upon real property taxation for revenues, of necessary revenues for the support of their operations;

(3) local educational agencies are to a great degree reliant upon real property taxes for the local share of the revenues necessary to support the operation of public schools;

(4) under the pattern of school finance in the United States under the laws of the States, roughly 50 percent of revenues from real property taxes are derived from taxes on residential property, while the remainder is derived from commercial, industrial, and utility property taxes (which are on places of employment);

(5) as a matter of fairness, Federal property should be treated, in so far as practicable, in the same manner as private property;

(6) Federal activities, whether or not associated with Federal property, place children in the schools of local educational agencies without the commensurate amount of local revenues necessary to provide for their education;

(7) both the exempting of property from taxation and the placement of children in public schools constitute a financial burden upon local educational agencies;

(8) there should be compensation to local educational agencies for each federally-connected child so that the amount available to support the local school of the cost of education for each such child is roughly equivalent to that which local taxpayers pay for the local share of the cost of educating a child; and

(9) the local share of the cost of education should be determined under the laws of the States.

These assumptions were examined and found to have been valid and, in general, to be valid at this time. On the basis of this examination, the Commission, at the Sixth Meeting, adopted policy findings upon which recommendations were to be developed as follows:

> (1) that, under a federal system of government, there are constitutional reasons for its continuation in that it is one means by which the Congress may mitigate the adverse effects upon the States and their local educational agencies which result from the exercise of the power of the Federal Government, thereby limiting the potential for conflict between the necessary and proper exercise of power by the Federal Government and the right of the States and their subdivisions to exist, which conflict could arise as a natural consequence of the division of sovereignty made by the Constitution with a federal system of government;
>
> (2) that, even though there are changed circumstances which affect the underlying premises of the program, those premises have validity at this time and will continue to have validity so long as taxation of real property forms the basis of support for the operation of public schools, or so long as Federal activities impose a burden on those schools;
>
> (3) that, since 1950, approximately half of the real property tax required to meet the local share of the cost of educating a child is derived from taxation of residential property and half from taxation of commercial or other real property; thus payments should be made by the Federal Government to local educational agencies on the basis of the use of Federal property both as a place of employment and as a place of residence and those payments should be computed to provide *all* of the local cost of educating a child who *both* resides on Federal property *and* resides with a parent employed on Federal property and *half* of that cost for a child who *either* resides on Federal property or resides with a parent employed on Federal property;
>
> (4) that there is no substantial evidence before this Commission at this time which supports the contention that there are net economic benefits to local educational agencies arising from Federal activities which mitigate the burden imposed upon those agencies by those activities; and

(5) that, because of amendments adopted since 1950, changed circumstances, more nearly complete information, and improved analytical techniques, refinements of the program are possible and should be undertaken.

During the course of the evaluation of the program changed circumstances were found which were so substantial as to require modifications in the program. These changes involved further development in constitutional law regarding intergovernmental tax immunities and the power of the Federal Government with respect to the functions of the States, developments within the Impact Aid Program which implicitly incorporated the concept of adequate level of education, incipient movements toward reform of school finance laws within the States, changes in congressional attitudes with respect to the extent that entitlements should be satisfied, and improved analytical techniques which make possible the measurement of fiscal burden on the basis of empirical evidence.

On the basis of these changed circumstances modifications of the existing program were explored and recommendations were developed. Two modifications are so extensive that they affect most facets of the program. These are reflected in the following policy findings:

(1) that there is an obligation of the Federal Government which arises from both revenue burdens and service burdens placed upon local educational agencies;

(2) that the degree to which that obligation requires compensation by the Federal Government should be based on consideration of the burden placed on local units of government and the cost of providing an adequate level of education for federally-connected children; and

(3) that, in determining the amount of compensation to local educational agencies for that burden, the net economic benefit conferred by Federal activities on local educational agencies may be taken into consideration.

Critical to an understanding of whether Federal activities constitute a burden on local educational agencies and whether the economic benefits conferred by activities compensate for that burden was the development of analytical techniques in the field of economics which make possible the measurement of burden in light of the benefits conferred. A model for measuring net burden was developed by the Commission and tested in a number of cases. This model was examined by leading authorities in the field of economic effects of military bases and was found theoretically sound. The information available from the use of that model suggests that there is a net burden resulting from Federal activities.

Since this issue is critical to this evaluation, the economic impact study is treated separately, as a research method.

Upon adoption of the policy finding that the Impact Aid Program should continue, a presumption was placed in favor of the program as it now exists and a decision was made that recommendations in favor of modifications should be based upon substantial evidence, except in cases where conflicts in policy implications required resolution, in which cases the policy with the higher priority or more direct connection with the issue would prevail.

In summary, those policies are as follows:

(1) that the Impact Aid Program should be continued with refinements and modifications, as may be appropriate;

(2) that budgetary considerations should not be a factor in determining the amount of entitlement (assessing burden and compensation therefor) but may be a factor in allocating funds when appropriations are insufficient to satisfy all entitlements; and

(3) that the Federal Government should be neutral with respect to the merits of the laws of the States.

D. METHODOLOGY OF THE ECONOMIC IMPACT STUDY

Introduction

The Commission conducted an economic impact study in order to measure the fiscal impact of Federal facilities on local educational agencies. The goal of the study was to determine whether a Federal presence in a community confers a benefit, or places a burden, upon the finances of local educational agencies. This study attempted an intensive effort to evaluate whether agencies receiving Impact Aid receive a net economic benefit or burden from the presence of the Federal Government in their community.

Economic impact of Federal activities on local educational agencies is important to a study of Impact Aid for at least two reasons:

- Eligibility for Impact Aid under section 2 of the statute depends directly on whether a local educational agency receives a net economic benefit or burden from the Federal presence. From the original statute to the 1978 amendments, the legislation has provided for entitlements only if revenue gains from the facility failed to "substantially compensate" for revenue losses. According to the statute, the local educational agency is entitled to receive an amount "equal to the continuing Federal responsibility for the additional financial burden with respect to current expenditures placed on such agency by such acquisition of property." That principle has remained unchanged for thirty years while other portions of the statute have been amended repeatedly.[11]

- The Education Department has based its proposed program cuts for fiscal 1981 in part on the rationale that a Federal installation confers a net economic benefit on a locality.[12] Presidents since Eisenhower have frequently justified cutbacks by claiming that revenue gains from the facility do exceed losses. Local educational agencies have countered by asserting the opposite--that Federal installations impose a net burden on local educational agencies.

How does the model measure burden? A Federal facility influences the finances of a local educational agency by affecting its expenditures and revenues. Schoolchildren associated with the facility add to the agency's expenditures. Employees affiliated with the installation contribute to the local tax revenue of the agency, though the facility itself contributes no property tax revenue. The installation also affects State educational aid to the agency: most State aid formulas increase assistance as the assessed vaulation per pupil in a district decreases.

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[11] The statute provides that when the Federal Government has, since 1938, acquired property constituting at least ten percent of the assessed valuation of a district, the local educational agency for that district is eligible for section 2 aid if the Federal acquisition "has placed a substantial and continuing financial burden on such agency...and...[the] agency is not being substantially compensated for the loss in revenue resulting from such acquisition by increases in revenue accruing to the agency from the carrying on of Federal activities with respect to the property so acquired..." (Pub. L. No. 874, Eighty-First Congress, §2, 20 U.S.C. 36 (1950).) The local educational agency is entitled to receive any amount according to the statute, "equal to the continuing Federal responsibility for the additional financial burden with respect to current expenditures placed on such agency by such acquisition of property." (Id.)

[12] Commissioner of Education, William Smith, testifying at the Commission's first hearing in Washington, D.C. on January 31, 1980, said:

> Over the past 15 years there have been two major mandated studies of the Impact Aid Program.... While each study has recognized the existence of a Federal impact, none has been able to do much with the question of the degree of net impact of Federal installations on the community. We do know that Federal installations are actively sought by communities.... This is done with the full knowledge that Federal property is tax exempt and that the influx of new workers and their families may require additional services.***
>
> The assumption must be made, therefore, that most communities consider such activities a net economic plus.... (Transcript of Hearing before the Commission on the Review of the Federal Impact Aid Program, Washington, D.C. 7 (January 31, 1980).)

When a facility increases agency expenditures more than it increases the agency's revenues, the effect of the facility is to impose a burden. When federally-attributable revenues exceed federally-attributable expenditures, the facility has conferred a net benefit.

In determining the Federal burden, the study focused on the agency's current expenditures, i.e., its maintenance and operation costs. Impacts on capital costs were not examined both because the Impact Aid statute reimburses agencies on the basis of current expenditures and because the cost of construction, like other overhead costs, cannot be divided up and attributed to federally-connected pupils.

In considering Federal contributions to revenue, the study disregarded the effect of the facility on categorical Federal aid. Agencies have no discretion in determining how categorical funds are spent because Federal regulations direct the funds to specialized needs. Though the Federal presence may affect the level of categorical Federal aid, these funds are provided on the basis of other criteria and may not be used for school maintenance and operation expenses; therefore, the study assumed that they do not affect the fiscal status of a local educational agency.

While it is necessary to consider the current effect of the Federal facility, the true impact of the installation can not be captured unless it is considered in historical context. Most sites occupied by Federal facilities would have been used for purposes ranging from residential and commercial to agricultural or industrial uses. In many cases, a variety of uses would have been made of the site, depending on the quality of the site, the growth of the region, and the needs of the area.

Like the Federal facility, alternative use of the site would have generated expenditures and revenues for the local educational agency. Residents would have paid taxes and would have had children attending public schools. In contrast to the Federal installation, industrial, commercial, or agricultural establishments on the site would have provided property tax revenue for the local educational agency.

The net benefits to the agency from alternative use of the Federal site are what economists refer to as "opportunity costs." These costs stem from opportunities sacrificed because a resource was not used in the most productive way that is possible. The full cost of a resource is the sum of its direct and opportunity costs. For example, in deciding whether or not to attend college, a prospective student should consider not only the direct cost of attending school but also the wages he could be earning if he chose to work instead.

The Commission study incorporated the opportunity cost for legal as well as economic reasons. Section 2 of the Impact Aid statute provides guidance on the treatment of Federal ownership of land. It requires that the entitlement of an agency "shall not exceed the amount which such agency would have derived...and would have had available for current expenditures from the property acquired by the United States."[13] In other words, Federal compensation should take into account alternative use of the site.

A determination of how much property tax revenue--as well as education costs and State aid--would be generated if there were no Federal facility requires informed projection about how that site would have been used. Parallel computations then reveal the fiscal impacts of Federal facilities and alternative site use. A comparison yields the net impact of Federal property acquisition.

The primary consideration, then, is how a facility's fiscal impact on a local educational agency compares with the fiscal impact the site would have had if the Federal facility were not there? More specifically, what is the difference between the net expenditures imposed by the facility and the net revenue generated? The calculation of true burden is made by comparing the burden or benefit of the base with the burden or benefit under alternative use. That is:

Net Burden = (Expenditures, Base - Revenues, Base)
- (Expenditures, Alternative Use - Revenues, Alternative Use)

Federal impact can also be computed by comparing the difference of expenditures under present and alternative use with the difference in revenues under present and alternative use. That is:

Net Burden = (Expenditures, Base - Expenditures, Alternative Use)
- (Revenues, Base - Revenues, Alternative Use)

When local, site-specific data are used for this computation, the result is the most precise estimate possible of the true impact of the Federal facility on the local educational agency. It shows the fiscal effect of the Federal acquisition of property that would have been used for other purposes.

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[13] The report on the original bill from the House Committee on Education and Labor added that the Commissioner, in determining the amount of entitlement under section 2, "may consider various factors indicating the actual current effect of the property acquisition upon the local agency in terms of its ability, with the sources of revenue available to it, to meet its educational costs, and the present impact of the acquisitions on its cost and ability to meet them."

The Commission used fiscal year 1979 data--the most recent year for which data was consistently available--to determine economic impact of Federal activities on local educational agencies.

The Study Sample

The economic impact study focused on the impact of military bases on local educational agencies. The Commission chose to examine the effects of military bases--and no other types of Federal facilities--for the following reasons:

1) The Impact Aid statute was designed in 1950 to help local educational agencies cope with fiscal problems resulting primarily from the presence of military bases within their school districts.

This statute was the culmination of a decade of piecemeal attempts by Congress to provide relief to local educational agencies with military bases established, for the most part, during World War II. In 1941, Congress passed the Lanham Act, which was designed to tide over federally-affected agencies through the end of the War. Readjustment to peace-time conditions occured more slowly than expected, however, and Congress provided assistance for maintenance and operation of schools each year from 1946-1950. Each year's authorizing legislation explained that the intent of Congress was to withdraw Federal aid as soon as possible.

In 1949, the House Committee on Education and Labor appointed two subcommittees to study the issue. The subcommittees studied 410 school districts, or about 70 percent of the federally-affected agencies in the United States. Military bases were the type of Federal installation in over 75 percent of the 410 districts examined by the subcommitees. The findings and recommendations of the subcommittees laid the groundwork for the 1950 Impact Aid statute.

A decade of legislation aimed at agencies with bases, and the extent of military impaction in 1950 both indicate that the statute was, for the most part, a response to problems created by military bases located in school districts.

2) Today, Impact Aid on behalf of children associated with military bases is by far the largest part of the program. Over half of the Public Law 874 funds go to schools serving children connected with bases. The next largest group triggering Impact Aid payments is Indian children; schools educating Indian children receive about one-eighth of the Public Law 874 funds.

In 1979, nearly $700 million was distributed to local educational agencies with federally-connected children: over $350 million was spent to cover children associated with military bases. Schools serving Indian children accounted for about $90 million.14/

14/ This information was supplied by the Division of School Assistance in Federally Affected Areas (SAFA), Department of Education.

3) The National Planning Association designed an economic impact model for the Department of Health, Education, and Welfare in 1974 to measure the impacts of military bases. Its report was filed nine years after the Stanford Research Institute applied a more general economic impact model to five local educational agencies, most of which housed military bases. Though the National Planning Association model was devised to measure impacts on the community, and not the local educatonal agency, the Commission adapted many of its suggestions.

The National Planning Association model incorporated a number of distinctive features of military bases. Among these were non-wage military income, the fiscal effect of on-base residency and purchases, the different multipliers for military and civilian personnel, and the concept of alternative use. A model that tried to study the opportunity costs of land put to other Federal use--e.g. Indian reservations --would encounter different features and problems: the age of Indian reservations and the legal complexity of United States-Indian treaty obligations would make the task both different and difficult.

The Commission selected for its study sample four school districts: Bellevue, in Bellevue, Nebraska; Douglas, in Box Elder, South Dakota; Chambersburg, in Chambersburg, Pennsylvania; and Escambia County, in Pensacola, Florida. All house military bases. These districts satisfy each of the criteria established by the Commission for its study sample. Those criteria were as follows:

1) Heavy Impaction. The study examines local educational agencies with a substantial percentage of base-connected pupils. These agencies are the most dependent on Impact Aid and therefore stand to lose the most from budget cuts. In addition, the range of error in a study of more impacted districts could be larger than in a study of less impacted districts without the ultimate outcome being affected. The Commission anticipated that the result of each case study--whether a benefit or burden--would be substantial in a heavily impacted district. The magnitude of the outcome would allow conclusions to be drawn with greater confidence.

The percentage of base-connected children in each district is as follows:

Box Elder, South Dakota.......	79 percent
Bellevue, Nebraska............	66 percent
Chambersburg, Pennsylvania....	20 percent
Escambia County, Florida......	19 percent

2) Diversity. Two of the districts, Bellevue and Douglas, are "Super A" districts where over 20 percent of the pupils are the children of military personnel living on base. A third district, Chambersburg, has a large number of civilian "B" students, the children of civilian

base employees living off base: about 19 percent of the pupils are civilian "B's." Escambia County, the fourth district, has a substantial number of both military and civilian "B" students: about eight percent of its student population are military "B's" and nine percent are civilian "B's."

Two of the districts are located in rural areas and two in metropolitan areas.[15] Douglas, a "Super A" district, and Chambersburg are both located in rural areas; Bellevue, also a "Super A" district, and Escambia County are parts of metropolitan areas.

The variation is described in the following table:

	SUPER A	HEAVY B	
		Civilian	Military
Rural	Douglas	Chambersburg	
Metropolitan	Bellevue	Escambia County	Escambia County

3) Geographical Distribution. Districts from different regions of the country were selected in an attempt to further diversify the sample. Of the four districts, one each is from the Northeast, the South, the Midwest, and the West.

4) Independent School Districts. The study focuses on local educational agencies with independent revenue-raising authority to simplify the task of isolating base-attributable revenues and expenditures. Dependent local educational agencies do not raise their own revenue; the revenue is raised by another governmental unit--usually the city government--and then distributed to local educational agencies. This extra step complicates determination of base impact because the percentage of revenue passed on to the agency may vary from year to year. Identification of base contributions to educational revenue would be more time consuming and probably less reliable if the education portion of the city budget varied substantially. Independent

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[15] The study uses the U.S. Census definition of metropolitan area (or SMSA--Standard Metropolitan Statistical Area) to classify the locations of school districts. The Census definition of a metropolitan area is as follows:

> Except in the New England States, a standard metropolitan statistical area is a county or group of contiguous counties which contains at least one city of 50,000 inhabitants or more, or "twin-cities" with a combined population of at least 50,000. In addition to the county or counties containing such a city or cities, contiguous counties are included in an SMSA if, according to certain criteria, they are socially and economically integrated with the central city.

districts are also far more numerous than dependent districts: over 90 percent of public school systems are independent.[16]

5) Single Federal Facility. The Commission chose districts with one major military base and few Federal installations other than the base. Districts with just one military base were selected because the time required to collect data from several bases and perform many more calculations would have cut down on the number of districts that could have been studied. The Commission also avoided districts with major non-military installations because an analysis of the base's impact on the local educational agency would describe only one part of the total Federal impact.

Both Chambersburg and Escambia County have pupils living in low-rent public housing, but in neither district do these pupils constitute more than four percent of the student population. Escambia County also educates a small number of pupils whose parents work on a base located several counties to the east.

6) Availability of Data. Only those districts were chosen for which reliable data about the school system, military base, and local areas were readily available. While information about the district and town are generally collected at the Federal level and therefore of fairly uniform quality, key information about personnel working on base is provided by each base. The quality of the data varied widely from base to base, and those districts that were selected had bases that kept relatively complete data.

Data Collection

Commission staff visited the four sites under study to gain an understanding of the dynamics of the area and to obtain the most precise and reliable data available. While Federal statistics provided much of the information, some essential data could be collected only by interviewing local officials. The key people interviewed during the two-to-three day site visits were the business manager of the local educational agency, the military comptroller, the county tax assessor, the city and county planner, and local historians.

Some of the important data obtained from these sources included the following:

(1) From the business manager of the local educational agency: data on the number of children from each Federal installation and how many were military or civilian; per-pupil cost figures for the State and for comparable school districts; the tax structure of the local educational agency and the amount of revenue raised by each tax;

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[16] There are 15,115 independent school systems, as opposed to 1,386 dependent school systems. Bureau of the Census, U.S. Department of Commerce, 1977 Census of Governments: Finances of Schools Districts, vol. 4, no. 1, at 1 (1979).

and, finally, the State aid formula, how it worked, and how much revenue it provided to the agency;

(2) From the military base comptroller: the number of base employees living on base, in the school district, and in the county (or SMSA); the percentage of those employees that were military and civilian in those areas, and their average salary; and the amount of on-base sales;

(3) From the tax assessor: the percentage of district property tax revenue from residential and commercial sources; the mean assessed valuation of agricultural and industrial property; tax treatment of mobile homes and their average yield; and the number of mobile homes, automobiles, and recreation vehicles owned by military employees; and

(4) From the city and county planners, and from local historians, topographers, or regional economists: projections about how the base site might otherwise have been used had the Federal Government not moved in. Where the establishment of the base predated World War II so that the development of the base and the area have been closely intertwined, the Commission requested projections about how the site would be used were the base to shut down in the near future.

In raising this question, the Commission was guided by tenets of economic geography, which attempts to understand how land is allocated among the many activities that could be competing for it. This discipline assumes that land use is shaped by systemic forces, rather than unpredictable human decisions. The Commission therefore asked local land-use experts to project alternative site use with two perspectives in mind:

- What uses does the site itself seem conducive to, taking into account its topography, geology, and resources?

- What has been the pattern of development in the surrounding region?

The Commission sought to achieve some certainty and consensus by requesting estimates within a range of values. The result was a range of projections about how the site would have been divided up among residential, commercial, agricultural, and industrial uses. The Commission was then able to estimate the fiscal impacts of the site's alternate use. The key assumption that had to be made to complete this calculation was that the practices of the local educational agency and the State would have been the same as they are today, and that the per capita income and number of unemployed in the area would also have been the same. Thus, the study used current data for variables such as tax rate, assessed valuation ratio, per-pupil cost, State aid formula, the number of unemployed, and average county income.

The Economic Impact Model

A thorough understanding of the model itself requires an examination of its internal logic. The discussion that follows begins with an analysis of the structure of the model. The most important calculations are presented in summary form; a more extensive and detailed presentation is given in Appendix G.

Following the analysis of the model's structure, the most important assumptions of the model are discussed to show just where generalizations had to be made. Like any model, the economic impact model relies on these assumptions to simplify reality so that the total economic process can be described.

As part of this simplification, certain variables had to be excluded from the model. The least consequential and least measurable variables were excluded to permit analysis of the key interactions. Discussion of these variables follows the analysis of the model's assumptions.

The description of the internal dynamics of the model is followed by a broader evaluation of the overall model. The Commission model is put into perspective by comparing it with other models of its type. Both economic impact and cost-benefit models are analyzed to understand their purposes and their applications. The Commission model is compared with both types of models to show where it adheres to the norm and where it deviates.

A summary of the results of the model is then presented to prepare the way for the ultimate test of any model's methodology: is the model valid? An exploration of economists' thinking on validation is undertaken to try to evolve a professional standard. This standard is then applied to the Commission model to determine how well it compares to other models. Though insufficient data precludes a foolproof test of validity, sufficient evidence has been gathered to permit a meaningful gauge of the model's value.

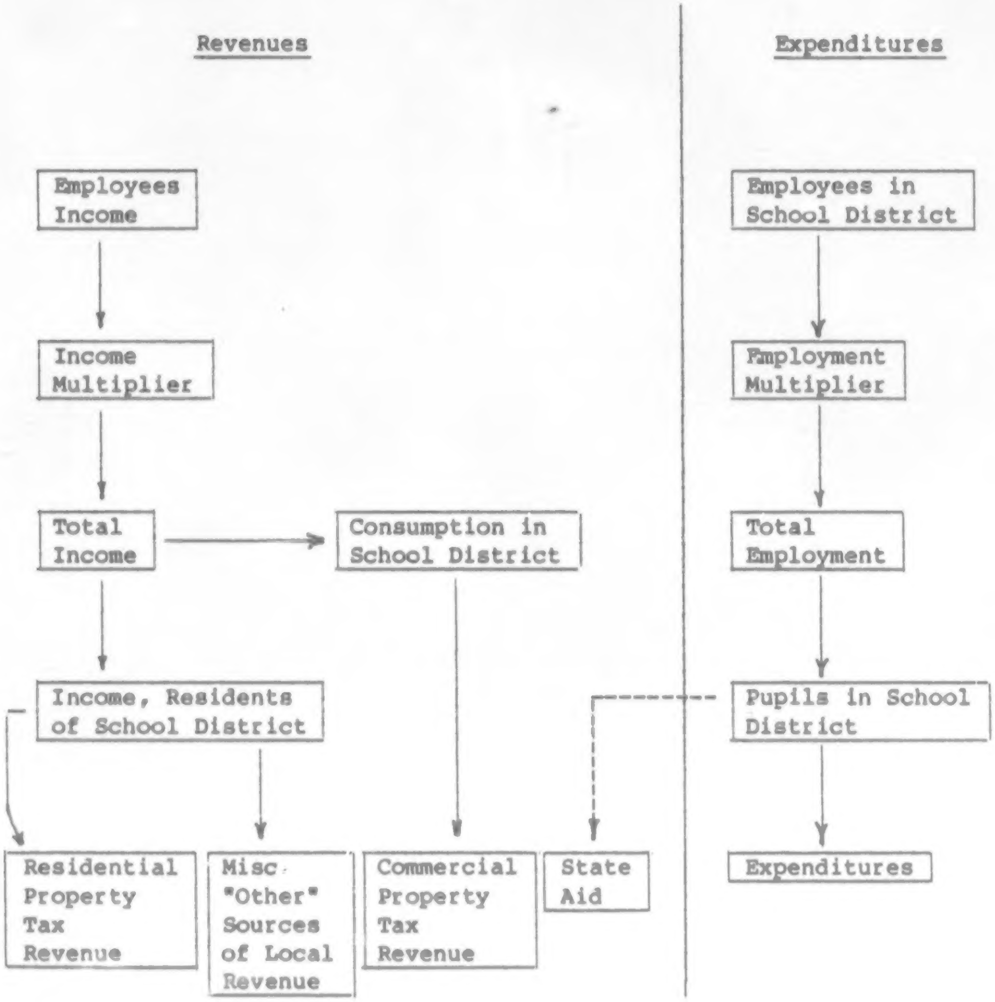
The model measures the impact of the base and of alternative site use on the local educational agency's expenditures and revenues. It determines the net impact of the base by comparing the burden or benefit to the agency of the base itself with the burden or benefit of alternative use. Another way of phrasing the same calculation is that net impact is determined by comparing the difference between the expenditures imposed by the base and alternative use and the difference between the revenues contributed by the base and alternative use.

The computation of expenditure effects is a relatively simple operation involving the number of pupils, the employment multiplier, and per-pupil expenditures. The revenue side, however, is more complicated. The model considers four sources of agency revenue: residential property tax revenue, commercial property tax revenue, general fund State aid, and miscellaneous "other" local revenue, which refers to local non-property tax revenue. Categorical Federal aid is excluded because the local educational agency has little discretion over its use.

A flow-chart description of the way that revenues and expenditures attributable both to the base and to alternative use are calculated is shown below:

THE ECONOMIC IMPACT MODEL

BASE/ALTERNATIVE USE


Revenues
Expenditures
Employees Income
Income Multiplier
Total Income
Consumption in School District
Income, Residents of School District
Residential Property Tax Revenue
Misc "Other" Sources of Local Revenue
Commercial Property Tax Revenue
State Aid
Employees in School District
Employment Multiplier
Total Employment
Pupils in School District
Expenditures

The following is a summary of the computations required to determine the net economic impact of a military base on a local educational agency:

Expenditures

[Base-connected or Alternative Use Employees
x Employment Multiplier x Pupils/Employee]
x Per-pupil Expenditures

Revenues

a) Residential Property Tax Revenues =

No. of Base or Alternative Use Employees x Average Personal Income
x Income Multiplier x Income, District/Income, County or SMSA
= Income, Base or Alternative Use Employees, District

Income, Base or Alternative Use Employees, District/Income, District
x Residential Property Tax Revenues, District

b) Commercial Property Tax Revenues =

No. of Base or Alternative Use Employees x Average Personal Income
x Income Multiplier x Consumption/Income
= Total Consumption, Base or Alternative Use Employees

(Total Consumption, Base or Alternative Use Employees - Base Sales)
x Consumption, District/Consumption, County or SMSA
= Base or Alternative Use Employees' Consumption, District

Base or Alternative Use Employees' Consumption,
District/Total Consumption, District
x Commercial Property Tax Revenue, District

c) State Aid

State aid attributable to the base is calculated by inserting base-attributable ADA and assessed valuation into the State aid formula. State aid attributable to alternative use is calculated by substituting the ADA and assessed valuation of the site under alternative use into the State aid formula.

d) Miscellaneous "Other" Local Revenue

Revenue Associated with Income:
Income, Base or Alternative Use/Income, District
x Miscellaneous "Other" Local Revenue, District

Revenue associated with population:
Population, Base or Alternative Use/Population, District
x Miscellaneous "Other" Local Revenue, District

Net Impact

[Expenditures, Base - Revenues, Base]
- [Expenditures, Alternative Use - Revenues, Alternative Use]

Another way of looking at the same calculation:

[Expenditures, Base - Expenditures, Alternative Use]
- [Revenues, Base - Revenues, Alternative Use]

The number of children in attendance at the schools of a local educational agency as the result of a Federal activity is equal to the sum of the number of schoolchildren of persons employed on the base and the number of children of employees whose jobs were induced by the spending of base employees and their families. The number of induced employees[17] is determined from the use of an employment multiplier that calculates the non-Federal employment in a community resulting from spending by families of base employees.

The per-pupil expenditure for a local educational agency is determined on the basis of average per-pupil expenditures in the State in which the local educational agency is located and the weighted average of per-pupil expenditures in comparable school districts.

Revenues affected by Federal activities are determined by calculating the Federal contribution to four primary sources of revenue: residential property taxes, commercial property taxes, State aid for local educational agencies, and miscellaneous "other" local revenue.

Residential property tax revenues are calculated by multiplying the residential property revenues of the local educational agency by the percentage of residential income in the district constituted by the income of base-attributable[18] employees.

Commercial property tax revenues are calculated by multiplying the total commercial property tax revenue in the district by the percentage of consumption in the district that is attributable to the base.

State aid for local educational agencies is affected by Federal activities because most State aid payments take into consideration the assessed valuation of taxable property and the number of children in the district of a local educational agency. When property is exempted from taxation or when the number of children increases, the average per-pupil assessed valuation decreases and the amount of State aid triggered by the base increases. To determine the amount of State aid attributable to the base, the model inserts into the State formula the amount of assessed valuation associated with the places of residence, employment and shopping of base-attributable employees and the number of schoolchildren associated with these employees.

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[17] "Induced" refers to those employees (as well as their schoolchildren and income) in the commercial sector who were hired to accommodate the spending of base employees. These employees are the result of the "multiplier effect."

[18] "Base-attributable" refers to the sum of "base-connected" and "base-induced," and applies to employees, their incomes, their schoolchildren, and their families. It also applies to the expenditures and revenues of the local educational agency that have been accounted for by base-attributable families. Also, *see* note 168, *infra*.

Implicit in this calculation is the fact that the true measure of any Federal burden on a local educational agency is not achieved because State aid programs do, to some extent, pay the cost of Federal activities. The model does not attempt to determine whether the States themselves have a net fiscal burden as a result of the Federal presence. No method for measuring the fiscal benefits received by the States from Federal activities has been devised; nor has a means for determining how any such theoretical benefit accrues to a particular local educational agency been devised.

The Federal contribution to miscellaneous "other" local revenue, which includes local income taxes, fees, and charges, is determined by multiplying total "other" revenue in the district by the proportion of income or population (depending on whether the tax is a function of income or population) comprised by base-attributable employees.

The same procedures are used to calculate the fiscal effect of alternative use of the site, except that judgments are exercised as to what the alternative use would have been. Alternative use is determined on the basis of local experts' projections about how the base site would have been used had there never been a Federal presence. When the Federal installation was established before World War II, however, this alternative use is determined on the basis of how the site would be used if the Federal base were to close.

Assumptions of the Model

A look at the key assumptions of the economic impact model will reveal how its various threads are woven together. Assumptions simplify any model because they permit generalization. They spare the need for detailed studies of each item and allow the model to go forward even though complete data may not be available. Often, assumptions represent the best statements that can be made about problems involving data that are inconclusive or unknowable.

In the case of the Commission model, these assumptions included the following:

1) The model uses two per-pupil expenditure figures in determining base impacts on expenditures: the average State per-pupil cost, and the average per-pupil cost of comparable local educational agencies in the State.[19/] The choice of which per-pupil expenditure figures to use was not a critical one: the conclusions of the study were not sensitive to per-pupil expenditure figures. In fact, a wide range of

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19/ These figures have been used only because they are the best and most nearly uniform data available which can be used to calculate cost of education. This use assumes only that local educational agencies spend what they can and not necessarily what they ought to spend to provide an adequate level of educaton to base-connected children.

per-pupil expenditure figures could have been used without affecting the outcomes significantly.[20/]

The model does not use the per-pupil expenditure figure for the impacted districts under study because the figures of those districts include Impact Aid payments and federally-connected pupils. To use the agencies' per-pupil expenditure figures in the study would be to assume that the Public Law 874 payments precisely cover the actual costs in the agency. The model can not assume the legitimacy of the very program that the Commission is reviewing.

The model must turn to sources outside the impacted district for the per-pupil expenditure figure of that district. The State average is one number the model uses because the State is the jurisdiction most representative of the district in location and size for which data is available.

To avoid the distortions in the study that would result from a divergence between per-pupil expenditures of the local educational agency and the State, the model also uses the average per-pupil expenditure of the comparable local educational agencies. Two of the districts

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20/ The Commission tested the sensitivity of the model to per-pupil expenditures by determining what per-pupil expenditure figure would have to be used in each case study to change the outcome of the base's impact from a burden to a benefit. In three of the four cases, the per-pupil cost figures that changed the outcomes were so deviant that no district in the State had per-pupil costs of that size. In the fourth case, only ten percent of the districts in the State had a per-pupil cost figure of that size.

The Commission also tried inserting the national average of per-pupil expenditures because it is the only other conceivable per-pupil expenditure figure that could reflect what a district really spends. The purpose was to see whether any legitimate figure that could have been used in the study would change the outcome that the burden of the base in three of four cases was commensurate with entitlement. The use of the national average of per-pupil expenditures--rather than State averages and the average of the five comparable districts--had only a slight effect on the outcome. The burden remained commensurate with entitlement. The range of comparability was slightly widened, however: using just comparable districts and State averages, the three burdens fell within a 21 percent range of entitlement; when the national average was also used, the burdens were all within 30 percent of entitlement.

The reason for the limited effect of the choice of the per-pupil expenditure figures--the average of the comparable districts, the State average, and the national average--on the result is that all the figures applicable to a district were within 21 percent of each other.

under study--Bellevue, Nebraska, and Douglas, South Dakota--use the comparable district method in computing their annual entitlement. The comparability of these five non-impacted local educational agencies has been certified by the Department of Education on the basis of various criteria such as the number of pupils in the districts, the mill rates, and the tax bases of the local educational agencies.

The two other agencies, Escambia County, Florida, and Chambersburg, Pennsylvania, do not use the comparable district method but instead use half the national and half the State average, respectively, in computing their entitlements. To select the comparable districts for these agencies, the Commission approached the respective State departments of education. In Florida, the State department of education had already grouped the local educational agencies in the State on the basis of five criteria: population, average family income, percent urban, median education, and number of white-collar workers. The Commission selected the four agencies in the Escambia County grouping that were not impacted and used the average of their per-pupil costs. For Chambersburg, the Commission requested that the Pennsylvania Department of Education select five comparable agencies for Chambersburg on the basis of the Department of Education criteria.

The model thus obtained two figures for each local educational agency --State per-pupil expenditure and comparable local educational agencies' per-pupil expenditure--that it used as the per-pupil expenditure figures for the local educational agencies under study.

The model does not include capital expenditures in per-pupil expenditures both because the Impact Aid statute does not consider the Federal impact on capital expenditures and because it is difficult to attribute a discrete portion of these costs to a group of students. The relationship between the number of pupils and the amount of capital expenditures is not clear. Furthermore, capital costs are financed over a period of time, and attributing these expenses to a fluctuating number of students would require a heroic effort offering returns of limited value.

2) In general, the model assumes that induced employees live throughout the county (or metropolitan area, depending on the site), and that their tendency to live in the school district is the same as that of other county residents. The assumption that the residential location patterns of induced employees are similar to those of everyone else in the county is used to estimate the contribution induced employees make to local educational agency finances. The key operation is the multiplication of the number of induced employees by the ratio of school district population to county population.

This assumption applies to all bases where the number of military children constitutes less than 20 percent of all pupils in the district or where the base is in a metropolitan area. In areas of this sort, base employees live throughout the area, and commercial development is fairly typical. Base employees who live throughout the county would tend to shop all over the county:[21] induced employees hired to accommodate this increased demand would work throughout the county. They would also, therefore, tend to live throughout the county in a random pattern similar to that of other county residents.

In rural districts where military children make up 20 percent or more of total pupils in the district, e.g., in the rural "Super-A" district of Douglas, South Dakota, the model's assumptions about induced employees are modified to reflect economic facts in those areas. Commercial development in heavily military areas tends to cluster around the base itself to accommodate the personnel living on base. This is especially true in rural areas, where the base may provide the densest residential cluster. Induced employees are therefore likely to work at stores in the district itself--in fact, very close to the base--rather than at stores throughout the county. The location patterns of induced employees are likely to parallel those of employees on base since their places of work are adjacent. Thus, the model assumes that induced employees are dispersed in a pattern similar to that of base employees in rural, "Super A" districts.

Regional economic impact studies have used similar techniques to reduce national impacts to the regional level. One study[22] had to reduce national employment effects for application to just Massachusetts and New England. To estimate the residences of the induced employees, the study assumed that the residential patterns of these employees reflected the location patterns of all employees throughout the United States. This involved dividing the employment in Massachusetts and New England by the United States totals.

3) The Commission model assumes that the residential property tax is proportionate to income, i.e., that the amount of tax each resident pays on his real property increases proportionately with the amount of income he earns. The model relies on this assumption to determine the amount of residential property tax attributable to employees associated with the base and with alternative use. The operation is to multiply the residential property tax revenues collected by the agency by the portion of district income attributable to base and induced employees living in the school district.

Most scholars hedge their conclusions about who--the rich or the poor--tends to pay the residential property tax because of the wide variation in local property bases and assessment practices. They agree that definitive statements can only be made for a particular

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21/ This assumption is based on the premise--adopted by the Bureau of Economic Analysis--that all commercial activity by base employees living in the county takes place within the county.

22/ John J. Hughes, "Disarmament and Regional Employment," 5 Journal of Regional Science (Winter 1964).

locality, rather than for the country as a whole. If forced to offer an opinion about the national incidence of the tax, many scholars would argue that it is probably mildly regressive.[23] One important dissenter is Henry Aaron, former Assistant Secretary in the Department of Health, Education, and Welfare, and currently at the Brookings Institution. While he agrees that only a locality-by-locality study would have any validity, he feels that the residential tax is progressive in the long run.

The Commission lacks the resources to determine progressivity or regressivity at each site it studies. The model, therefore, has to apply a single standard to each of the sites. In light of the disagreement among experts about national incidence. the assumption of a proportionate residential property tax seems a fair one to make.

4) The Commission model assumes that the per capita income in the district is the same as in the county. This assumption is made so that residential property tax revenue can be computed with as much precision as possible. Income data, which is available only on the county level, must be used because of the model's assumption that the residential property tax is proportionate to income.

The idea for using income data originated in the report made by the National Planning Association to the Department of Health, Education, and Welfare. This idea, the Commission felt, improved on the method used by the Stanford Research Institute (S.R.I.), which used pupils instead of income to estimate residential property tax revenue attributable to base employees. By using the ratio of federally-connected pupils to total off-base pupils, the S.R.I. study assumed that the amount of property taxes paid by the average federally-connected family was equal to the amount paid by the average family in the rest of the district. The S.R.I. study also assumed that the number of schoolchildren per family was the same in the average federally-connected family as in the average family in the rest of the district.

The Commission found that neither assumption was likely to be correct. In the districts studied, the average income of base employees exceeded the average income of employees in the rest of the area, sometimes by a substantial margin. In addition, the number of schoolchildren per family, the Commission found, was substantially larger for the average military family than for the average family in the area. The Commission felt that the use of income, rather than pupils, to estimate residential property tax revenues substantially improved the model and justified the possible discrepancy between school district and county figures.

23/ See, for example, Richard Bird & Enid Slacks, Residential Property Tax Relief in Ontario, University of Toronto Press, Toronto (1978) and Dick Netzer, "The Incidence of the Property Tax Revisited" in 26 Nat'l Tax J. (Dec. 1973).

5) The Commission model assumes that consumption is proportionate to income, i.e., that as income increases, consumption rises by the same percentage. This assumption underlies the estimation of commercial property tax revenues attributable to base and alternative use employees. From employees' income, the model estimates their consumption and, ultimately, their contribution to commercial property tax revenue.

Studies have shown that consumption patterns over the long run vary proportionately with long-term income.[24/] These studies, which demonstrate a long-term correlation between consumption and personal income, confirm the assumption of the Commission model.

6) The Commission model assumes that the market value of a retail establishment is correlated with its sales volume. This assumption is made to link base employees' consumption with the commercial property tax revenues yielded by stores patronized by these employees. When linked with the previous assumption tying income and consumption, this assumption completes the chain between employees' income and the amount of commercial property tax revenue for which they are responsible.

The Commission undertook a study to examine the correlation between market value and sales volume for retail establishments. Data on annual sales was used and, as a proxy for market value, the product of price per share and the number of common shares.[25/] The Commission's study covered 27 national retail chains, including supermarkets, department stores, drug stores, hotels, and fast food chains. Using a Pearson test, the Commission found that a correlation between market value and sales existed with 95 percent confidence. This finding suggested a very strong linear relationship between market value and sales, confirming the model's assumption.

7) The Commission model assumes that variables used in computing alternative use--including the tax rate, assessed valuation ratio, per-pupil cost, number of unemployed, average county income, and State aid formula--would be the same as they are today. This assumption is made because the determinants of these variables are too numerous and complex to take into account. The State aid formula, for instance, is a product of political, economic, institutional, and legal factors well beyond the realm of the model. Prediction of a different State aid formula under alternative use would be an overwhelming task. The impossibility of taking all events into account frequently compels

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[24/] Franco Modigliani & Albert Ando, "The 'Permanent Income' and the 'Life-cycle' Hypothesis of Saving Behavior: Comparisons and Tests," in Consumption and Saving Vol II (I. Friend & R. Jones eds. 1960); and Milton Friedman, A Theory of the Consumption Function (1957).

[25/] An approach suggested by Professor Minor Sachlis, Professor of Finance at George Washington University.

economists to make this assumption. Referred to as "ceteris paribus," or "other things being equal," the assumption permits economists to examine the important relationships among variables whose value can be determined.

These seven assumptions allow generalization about variables incorporated into the model. To make an analogy between an economic model and a map, assumptions allow the mapmaker to draw each city block the same width, to depict each street as being straight, and to space parallel city blocks the same distance apart. In fact, of course, there are endless variations in streets' widths, courses, and distances.

Variables Excluded

Like any economic model, the economic impact model excludes certain variables: those that are not relevant to the objective of the study, and relatively insignificant variables that would be expensive to obtain.

Because of the complexity of economic processes, it is often necessary to simplify these processes in order to understand them. A model identifies the most important factors, stripping away nonessentials that confuse the issue. Left exposed are the structural relationships among the important variables.

Economic models simplify reality by relying on words, diagrams, and mathematics. They are actually not very different from physical models, which accomplish the same purpose. Maps offer particularly good analogies for economic models. They generally reproduce only the relevant features of an area, providing only enough information to help a stranger find his way. They omit extraneous characteristics such as dust, air, and noise, and blur details like variations in neighborhoods and housing. A thoroughly representative map, like any such model, would be very costly and probably impossible to use.

A closer look at base impacts shows that some impacts influence the character of the district and the quality of education, but do not actually affect expenditures or revenues of the local educational agency. Examples cited in testimony before the Commission include the higher absenteeism of federally-connected children and stimulation resulting from the presence of more "worldly" military children. They are excluded from the study because they do not affect the financial status of the local educational agency in any apparent way.

Other base impacts, if not intangible, are very difficult to measure. Examples cited in testimony before the Commission include the high turnover rate associated with federally-connected children, the disproportionately large number of federally-connected children in language skills programs; and compassionate transfers of handicapped children.

Though these immeasurable effects are real, it turns out that, in the context of the study, their size is relatively small.[26/]

Another variable excluded is the effect of base procurement, or wholesale purchases, on the local economy. Determining the impact of procurement would cost the Commission $5,000 per site. The only way around this expense would have been to try to capture the range of possible local impacts and apply this range to each locality. Unfortunately, the size of the procurement multiplier varies so widely from locality to locality that economists at the Bureau of Economic Analysis advised against using it.

Furthermore, bases tend to do very little of their procurement in the local economy. Commissaries and PX's associated with the Army, Navy, and Air Force make no more than five to ten percent of their wholesale purchases, on average, in the local economy.[27/] Excluding this variable from the model, therefore, probably does little to distort the model's description of reality.

Comparison with Conventional Economic Impact Models

The preceding discussion has explored the internal workings of the Commission model in some detail--proceeding from an analysis of the model's structure to an examination of its assumptions and the variables it has excluded. The focus now broadens to encompass the model as a whole. The model is compared with other models of its type to highlight its structural conformity and non-conformity. The results of the model are summarized and, finally, the model's validity assessed by measuring it against a professional standard evolved by economists.

Economic impact analysis is an approach used in the branch of economics known as regional economics. The field of regional economics has grown during the last three or four decades as economists have become interested in applying orthodox economic tools to problems related to regional growth. A survey of techniques in regional economics--especially cost-benefit and economic impact approaches--can reveal where the Commission model resembles the norm and where it has had to draw on economic principles outside standard economic impact analysis.

[26/] The Commission actually attempted calculating the cost of turnover by finding out the percentage of overall turnover attributable to the federally-connected children and applying that percentage to the salaries of counselors, administrative, and clerical staff hired to cope with turnover. The fiscal impact of the turnover was relatively small and the Commission staff headaches relatively large.

[27/] Directors of operations and public relations associated with the different services pointed out that, while local procurement would vary from base to base, a national average--common to all three services--would fall within this range.

Both cost-benefit analysis and economic impact may involve the application of multipliers. Early multiplier theory relied on economic base models to estimate regional impacts. These models and their more sophisticated successors, input-output models, help estimate the overall effects of an outside stimulus on a region. Theory underlying the economic base approach holds that the local economy is divided into two sectors: an export sector that sells goods and services outside the area, and a service sector that provides goods and services to the area of interest. A more detailed and complex view of a local economy is provided by input-output analysis, which has dominated regional research since World War II. This approach breaks the economic base down industry by industry, rather than dividing the economy into just two sectors, and analyzes the role of each industry in regional impact.

Cost-benefit analysis is the principal framework used to evaluate the economic consequences of public expenditure decisions. It attempts to determine whether a project provides a net benefit or cost to the community. The concept can also be used to compare competing proposals to see which provides the largest net benefit or highest benefit per unit of cost.

Economic impact analysis estimates the ultimate impacts on a community of external changes such as base closings, budget cutbacks, and new facilities. Building on multiplier theory, economic impact analysis focuses on the effect these changes have on regional output, income, and employment. Most studies rely on input-output analysis for this determination.

The Commission's economic impact model, like other economic impact models, applies results from an input-output model to local data to come up with overall effects of a base on employment and income. The model uses the earnings and employment multipliers developed by the Bureau of Economic Analysis for application to military bases.28/

In contrast to a more traditional economic impact approach, the model borrows heavily from cost-benefit analysis--particularly in its comparison of the benefits and burdens of the base and in its consideration of opportunity costs, i.e., alternative use of the site. These and other adaptations have been dictated by the particular nature of the Commission's task. Each of the modifications is grounded in economic theory and has been applied in empirical study by other economists.

28/ The Commission relies on a range of multipliers developed by the Bureau of Economic Analysis. This range covers the gamut of possible multipliers that may apply to a community. The Bureau of Economic Analysis is capable of calculating definitive multipliers for specific areas; in fact, the Department of Defense has contracted with them to do just that. The Bureau charges $5,000 to compute regional impacts for each military base. The Commission has chosen to forego this expense and use the range.

A closer look at the departures of the Commission model from more conventional economic impact studies reveals the following:

(1) The Commission model compares the benefits of the Federal base with the burdens it imposes, an approach dictated by the statute and the program's history.

An analysis of the benefits and burdens of bases on local educational agencies is important to a study of Impact Aid for two reasons: section 2 of the Impact Aid statute provides for entitlements only if revenue gains from the facility do not "substantially compensate" for revenue losses; and administrations since Eisenhower have based program cuts in part on the rationale that a Federal installation confers a net economic benefit on a locality.[29]

(2) The Commission model considers opportunity costs, the benefits lost because a resource was not used in the most productive alternative way that is possible. Many cost-benefit studies incorporate consideration of opportunity costs because they evaluate the effects of government projects. The costs of a government project go beyond the cost of land or labor; they include the benefits those resources could have yielded if they were to be used privately. Professors Stokey and Zeckhauser of Harvard cite the example of land on which a town plans to build an incinerator. If that land would otherwise be used for a high school athletic complex, the opportunity costs of building the incinerator would consist of the net benefits that would have been generated by the athletic complex. The true cost of the incinerator then is its direct cost plus the opportunity costs of not using the site for an athletic complex. Cost-benefit studies that fail to consider opportunity costs end up undervaluing the true cost of a project.[30]

The Commission study considers opportunity costs for legal as well as economic reasons. Section 2 of the Impact Aid statute, which treats Federal ownership of land, provides that the entitlement of a local educational agency "shall not exceed the amount which such agency would have derived...and would have had available for current expenditures from the property acquired by the United States."[31]

The Commission study resembles many cost-benefit analyses in that it considers the impact of government use of resources--in this case, land. The statute no doubt included the concept because it wanted a true consideration of Federal impact. Economic impact studies of military base closures, on the other hand, do not have to consider opportunity costs because they are projecting the effect of private use

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29/ See note 12, supra.

30/ Edith Stokey and Richard Zeckhauser, "Chapter 9: Project Evaluation: Benefit-Cost Analysis" in A Primer for Policy Analysis 25 (1977).

31/ See note 13, supra.

of what was once a Federal site. The question of how the site might otherwise have been used does not come up when what was once a government site is being used privately.[32]

(3) The Commission model takes a retrospective look at base impact. It attempts to compare the effect of the facility in fiscal year 1979 with the impact the site would have had in 1979 if it were not used by the Federal Government. In contrast, most economic impact studies are forward-looking: they attempt to predict the future impacts of military base closings or of facilities such as steel mills or airports.

(4) Because the Commission is interested in local educational agencies, the study focuses on Federal impacts within the school district--and not, say, the county, or metropolitan area.

(5) The Commission model examines the effect of a base on the finances of a governmental unit--an independent local educational agency. The model computes net impact by comparing the effect of the base on expenditures and revenues with the effect of alternative use of the site on expenditure and revenues. Most economic impact studies simply seek to

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32/ The failure to consider properly opportunity costs can significantly alter the results of a cost-benefit analysis. One vivid example is the 1967 analysis by the Bureau of Reclamation of the Nebraska Mid-State Project, an irrigation project that would have served agricultural land in south-central Nebraska. Professors Steve Hanke of Johns Hopkins, and Richard Walker of the University of California at Berkeley show that correct assessment of opportunity costs would have substantially altered the Bureau's estimates.

Professors Hanke and Walker based their critique on what they believed to be the dominant opinions of the economics profession. They noted that the water of the Platte River should not have been treated as a free good, since there were many demands for its use. If not used for irrigation, it could have been used for municipal, industrial, or recreational purposes. Any of these uses would have yielded benefits for the area that the Bureau failed to consider.

The authors also pointed out that, while the Bureau did estimate the opportunity cost of owner-operator labor, it did so incorrectly. The opportunity cost of the increase in labor required is the wage that the employees could have been earning in the general area. Instead, the Bureau used the wage earned on the parcel of land itself as the opportunity cost. Since the salaries in the general area were higher than those on the farm, the authors point out that the Bureau underestimated opportunity costs. [Steve Hanke & Richard Walker, "Benefit-Cost Analysis Reconsidered: An Evaluation of the Mid-State Project," 10 Water Resources Research 898-908 (1974), reprinted in Public Expenditure and Policy Analysis 329-352 (R.H. Haveman & J. Margolis eds. 1977).]

determine the effect of a facility on the employment, income, or output within a region, without tying those effects to the finances of a governmental unit.

The Commission model focuses on local educational agencies because the Impact Aid statute is designed to provide reimbursement for the burden imposed by Federal activities on such agencies. The Declaration of Policy of the statute reads: "the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following sections of this title) for those local educational agencies upon which the United States has placed financial burdens."[33/] If the Commission model is to be of any help to policymakers, it should try to determine the validity of this legislative assumption.

Like other regional economic impact models, then, the Commission model starts with local data associated with the installation and applies an input-output table to estimate the impact of the facility on employment and income in the county or metropolitan area. The Commission model differs in important respects, however, from most economic impact models. These differences stem from the particular nature of the Commission's task: the Commission model tries to measure Federal impact in a way that will show whether the functioning of the Impact Aid statute is consistent with the underlying principles of the statute.

Results

The Commission model has made estimates for four local educational agencies: Bellevue, Nebraska; Douglas, South Dakota; Chambersburg, Pennsylvania; and Escambia County, Florida. All house military bases. Two of these agencies have "Super A" districts: one of these, Bellevue, is part of a metropolitan area; the other, Douglas, is rural. A third agency, Chambersburg, is heavily civilian "B," meaning that most base employees are civilians living off base; it is in a rural area. Escambia County, the fourth agency, serves a large population of military personnel living off base, making it a heavy military "B" district; it is part of a metropolitan area.

The results of the economic impact study of four local educational agencies--discussed at greater length in the next chapter--show that each local educational agency suffered a net burden. The size of the burden, in three of the four cases, was commensurate with the Impact Aid entitlement of the local educational agency; in these cases, the burdens were within 21 percent of the entitlements. In the fourth case, the burden was far smaller than the agency's entitlement.

33/ Act of September 30, 1950, Pub. L. No. 874, 81st Cong., 2d Sess., §1, 64 Stat. 1100-1101 (current version at 20 U.S.C.A. §236 (1974 & Supp. 1978)).

The Stanford Research Institute is the only other group that has conducted a similar study; it formulated a model that it applied to five local educational agencies in 1965. The Stanford Research Institute model, like the Commission model, examined the effects of Federal installations on agency finances. It also estimated Federal employees' effect on agency expenditures and residential property tax revenues. The Stanford Research Institute model diverged from the Commission model in that it did not consider revenues from commercial property taxes, local non-property taxes, and State aid. It also did not account for induced income and employment effects or for opportunity costs.

The Stanford Research Institute study showed that all five agencies incurred a burden. The size of the actual burden was estimated for four of the local educational agencies, and the burdens fell within 30 percent of the entitlement of the local educational agency. Despite its differences from the Commission model, the Stanford Research Institute study produced conclusions similar to those of the Commission model.

Conclusion: The Validity of the Model

Are the conclusions of the economic impact model correct? The Commission model has been examined from the outside looking in and from the inside looking out. It has been compared with other models and its own internal dynamics have been explored. But the ultimate question lingers: is the model valid?

In theory, how should any model's validity be judged? Nobel Prize-winning economist Milton Friedman, in his article on economic methodology first published in the early 1950's, pointed out that models are designed to explain objective reality. Though they simplify the real world, they do so in an attempt to describe and predict actual events. The real test of a model's success, then, is to examine how well its predictions conform with empirical fact. Does the evidence confirm or deny the predictions of the model?

"Only factual evidence can show," writes Friedman, "whether [the model] is...tentatively 'accepted' as valid or 'rejected'.... The only relevant test of the validity of a hypothesis is comparison of its predictions with experience. The hypothesis is rejected if its predictions are contradicted;...it is accepted if its predictions are not contradicted."[34]

Other writers have echoed Friedman's conclusion. Three possible ways that a model might be tested have been cited: how well it explains real events, predicts real events, or permits a policymaker to control real events. The ultimate test of the model, though, is how well it stands up to empirical reality. "To see whether [the model] is any good," it has been said by the economics writer for the New York Times, it must be tested "in the real world."[35]

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[34] Milton Friedman, "The Methodology of Positive Economics," in Readings in Microeconomics 27 (W. Briet & H. Hochman eds. 2d ed. 1971) [hereinafter cited as Friedman].

Two recent authors have reaffirmed the point Friedman made over two decades earlier. A model should be judged by its predictions; "if it yields predictions that are correct for a satisfactory proportion of the cases we consider," two British professors write, "then it is a good explanation."[36]

What is the role played by the use of assumptions in economic modeling? Assumptions serve to simplify reality so that conclusions can be reached that predict events in the real world. To return to the road map analogy, assumptions about the width or course of roads are successful if they enable the traveler to reach his destination. The test of the validity of assumptions, Friedman says, is the same as that for the model in general: do they lead to results that accurately predict reality?

The validity of the Commission model can ultimately be tested, then, only by applying the professionally-accepted standard evolved by Friedman et al. The Commission model, of course, does not offer predictions about the future, but about the year 1979. It predicts the effect on the local educational agency's finances that the site would have had were it not used by the Federal Government. The model then compares this impact with the effect that the base actually did have in 1979. The difference represents the model's prediction about the true impact of the base on the local educational agency.

The empirical reality to which these predictions should be compared is the effect that base closings have had on local educational agencies. A look at base closings would show how communities have fared when the Federal Government has indeed moved out and alternative use has been made of the site. The comparison of the welfare of communities before and after bases shut down would highlight the true impact of these bases.

The economists' test of validity can be applied to the Commission model by comparing its predictions with empirical reality. Three of the findings of the Commission model are listed below and then compared with results from empirical studies:

1) BASES IMPOSE A NET BURDEN ON LOCAL EDUCATIONAL AGENCIES.

A Stanford Research Institute study for the Department of Health, Education, and Welfare (not to be confused with the one that applied an economic impact model to five local educational agencies) examined the effects of base phase-outs[37] on 29 local educational agencies. Within in one year of the phase-outs, 26 of the 29 agencies were in better fiscal health than they had been before the base started closing down. In other words, about 90 percent of the agencies had benefited from base phase-outs within a year.

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[35] Leonard Silk, Contemporary Economics: Principles and Issues 53 (1970).

[36] Ivy Papps & Willie Henderson, Models and Economic Theory 64 (1977).

[37] Defined as bases closed down, reduced in force, or consolidated.

Why were agencies so much better off? In 16 of the 29 agencies, significant increases in assessed valuation per pupil took place. The fact that the base site became taxable proved to be a key factor, then, in over half of the agencies' improved fiscal situations. Private use was made of the base site and the property became subject to local taxes. Other important factors were increased State aid as a result of the base phase-outs, increases in local property tax rates, and reassessments of local property values.[38/]

Another empirical study was done by the Office of Economic Adjustment at the Department of Defense. In examining the effect of base closings on 91 communities, the survey found that a military base is "not a great boon or stimulus to a local economy."[39/]

Specifically, the Office of Economic Adjustment found that a total of over 100,000 civilian jobs developed on base sites after the base shut down. These more than compensated for the loss of over 88,000 former Department of Defense civilian or contractor jobs. The Office of Economic Adjustment also found that 42 high schools and colleges had been established at former bases, that industrial parks had been set up at 60 of the former bases, and that airports had been developed at 39 former bases.

A longer-term study of base closings was also done by of the Office of Economic Adjustment. The effects of base closings on seven communities during the five or more years after shut down were studied. That study found that all the communities had become more "stable, diversified and self-reliant."[40/] A before-and-after comparison was made of the population, employment, incomes, housing, and retail sales of the seven communities, which revealed that "after a brief lull, local economies bounced back with renewed vigor."[41/]

Each of these empirical studies is consistent with the findings of the Commission model that bases impose burdens on local educational agencies.

[38/] Phillip L. Adams & Robert G. Spiegelman, Stanford Research Institute, Effect of Federal Installation Phase-outs upon School Districts 57 (1965).

[39/] Transcript of Hearing before the Commission on the Review of the Federal Impact Aid Program, Washington, D.C. 105 (May 28, 1980).

[40/] David A. MacKinnon, "Military Base Closures: Long Range Economic Effects and the Implications for Industrial Development," 31 Am. Indus. Dev. Council J. 7-42 (1978).

[41/] Id. 17.

2) SIZE OF THE BURDEN IMPOSED BY THE BASE ON THE LOCAL EDUCATIONAL AGENCY WAS COMMENSURATE WITH THE IMPACT AID ENTITLEMENT IN THREE OUT OF FOUR CASES.

The Stanford Research Institute found that 26 of 29 local educational agencies benefited from base phase-outs by an amount equal to or greater than the Impact Aid entitlement. The study, in other words, showed that the agency's benefit was equal to or greater than the size of the Impact Aid entitlement in 90 percent of the cases. This finding concurs with the finding of the Commission that three of the four agencies studied suffered burdens commensurate with their entitlements.

Sixteen of those 29 local educational agencies benefited primarily because the site was returned to the tax rolls. Similarly, the Commission model has found that bases impose a revenue burden chiefly because they are tax-exempt.

3) EMPLOYEES ASSOCIATED WITH THE BASE CONTRIBUTE TO LOCAL EDUCATIONAL AGENCY REVENUE PRIMARILY THROUGH THE PROPERTY TAX THEY PAY ON THEIR HOUSING. EMPLOYEE CONTRIBUTIONS TO COMMERCIAL PROPERTY TAX REVENUES ARE MUCH LESS SIGNIFICANT.

A study of 24 communities by the Bureau of Economic Adjustment in 1970 showed that, during the year of the base closing, only seven communities experienced even moderate reductions in retail sales volume. Over 70 percent of the communities experienced gains in retail sales within one year after base closure.

The longer-term study of seven communities showed that all seven communities registered increases in retail sales during the years after base closure. In most of the communities, in fact, sales grew at a rate equal to or better than national levels of retail sales growth.

Housing, on the other hand, was more severely affected by base shutdowns; it proved to be what the study called "one of the most sensitive sectors"[42] of the local economy after a closing. The unneeded homes left behind by departing base personnel resulted in a sharp decline in residential values. According to the 1970 study of eight housing markets, residential sales activity "virtually ceased"[43] after closure announcements. That study found that low-value housing suffered a "severe" decline in values: low-income, single-family homes in seven communities declined by an average of about 14 percent.

The findings of these empirical studies are consistent with the results produced by the Commission model. Base personnel make their chief contributions to local revenue through the property tax paid on housing. Tax revenue resulting from employees' purchases is much less significant.

42/ *Id.* 16.

43/ John E. Lynch, *Local Economic Development After Military Base Closures* 288 (1970).

Before concluding the discussion of validity, it should be noted where the parameters of these empirical studies fail to parallel those of the Commission model. The Commission model applies the alternative use test differently in some cases: for bases established during or after World War II, the Commission model predicts what would have happened to the local educational agency if the Federal Government had never established the base. Where bases were established before this period, the model asks the question: how would the base be used if the Federal Government were to shut down. Community development has been too closely intertwined with these older bases to identify the effects of the bases. The empirical studies, of course, examine how communities have used bases that the Federal Government has closed down.

A second difference between the Commission model and some of the empirical studies is that some of the studies examine communities and not local educational agencies. Studies by the Bureau of Economic Adjustment fall into this category.

Finally, the empirical study of local educational agencies by the Stanford Research Institute took into account State increases in discretionary State aid as a result of phase-outs. The Commission model does not try to predict what the State will do in response to a phase-out. This difference in approach makes it difficult to pinpoint just how important a role taxation of the base site--rather than increases in discretionary State aid--played in the improved fiscal health of local educational agencies.

How significant are these three differences between the empirical studies and the Commission model? The Commission model has found that, in most cases, how the question of alternative use is addressed is not particularly important: private use of the site financed the cost of educating the children associated with the site in the four cases studied. Apparently, where nonfederally-connected pupils were involved, the assessment ratio, local tax rate, and State aid formula meshed well enough to ensure that enough revenue was raised to cover the costs of education.

The other two differences do not detract from the thrust of the empirical results: that most local educational agencies and communities benefit from base closures; and that a principal reason for the benefit is that the communities put the site to use and derive tax revenues from it.

One important question left unresolved by empirical studies is the size of the burden. The Stanford Research Institute found that the burden was equal to or greater than the Public Law 874 entitlement in 90 percent of the cases; unfortunately, that study included ad hoc increases in State aid. The flaws in this comparison of the Stanford

Research Institute findings with those of the Commission model recall a point made by Milton Friedman about the difficulty of verifying economic models. Friedman pointed out that clear-cut evidence is difficult to produce in economics because of the uncontrolled nature of the economist's system.[44] The absence of laboratory controls on a model makes it difficult to find evidence that conclusively confirms a model's predictions.

The lack of a perfect match between empirical studies and the Commission model should not be disheartening; if anything, the fit is closer than for many economic models. The parallels are sufficiently close to permit several definitive statements about the consistency of the Commission's predictions with the empirical evidence. The following conclusions can be drawn with confidence:

- The findings of the Commission model that military bases impose a net burden on local educational agencies is consistent with the results of empirical studies.
- The findings of the Commission model in three cases that the size of the net burden is commensurate with the Impact Aid entitlement is consistent with the results of the one empirical study done of that issue. The Commission's findings are also consistent with the predictions produced by the Stanford Research Institute model, the only other economic impact model of this type.

Strong conclusions can also be made about the converse:

- Most empirical evidence is *not* consistent with the assertion that bases confer a net benefit on local educational agencies. At the same time, no models have been designed that have made predictions of net benefits.

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[44] *Friedman*, *supra* note 34, at 45.

CHAPTER III

REVIEW OF THE EVIDENCE

Under the Plan of Study adopted by the Commission at the Second Meeting on December 14, 1979, the Commission scheduled hearings for the following sites and dates, to take place in 1980:

Washington, D.C.	January 31-February 1
Denver, Colorado	March 6
Chicago, Illinois	March 7
Seattle, Washington	March 7
San Francisco, California	April 22
Window Rock, Arizona	April 24
San Antonio, Texas	April 25
Montgomery, Alabama	May 1
New York, New York	May 15-May 16
Washington, D.C.	May 29-May 30

In addition, it was agreed that members of the Commission would visit the following sites for a firsthand look at Federal activities:

Bellevue, Nebraska	March 6
Window Rock, Arizona	April 23
Pensacola, Florida	May 2
Portsmouth, New Hampshire	May 16
Norfolk, Virginia	May 30

Although the hearings were expected to provide the Commission with a full measure of evidence regarding the operation of the Impact Aid Program, it was found that it was only through in-house research that many issues could be examined. Therefore a research staff was authorized to undertake three areas of special study: school finance, economics, and educational needs. In addition, the school finance and educational needs areas were to be supplemented with extensive legal research.

It is from these two sources--hearing testimony and in-house research--that the information necessary to assist in developing and supporting recommendations of the Commission were gathered. Part A of this chapter summarizes the evidence gathered through the hearings; part B describes that which has been developed through staff research.

The hearings scheduled were designed to be, for the most part, regional hearings with designated regions to be covered by each hearing as follows:

I. **WASHINGTON, D.C.**

Delaware; District of Columbia; Maryland; North Carolina; Pennsylvania; Virginia; West Virginia

II. **DENVER, COLORADO**

Colorado; Kansas; North Dakota; South Dakota; Utah; Wyoming

III. **SEATTLE, WASHINGTON**

Alaska; Idaho; Montana; Oregon; Washington

IV. **CHICAGO, ILLINOIS**

Illinois; Indiana; Iowa; Michigan; Missouri; Wisconsin; Minnesota; Nebraska; Ohio

V. **SAN FRANCISCO, CALIFORNIA**

Arizona; California; Hawaii; Nevada

VI. **WINDOW ROCK, ARIZONA**

Arizona; New Mexico; Oklahoma

VII. **SAN ANTONIO, TEXAS**

Arkansas; Louisiana; Oklahoma; Texas

VIII. **MONTGOMERY, ALABAMA**

Alabama; Florida; Georgia; Kentucky; Mississippi; South Carolina; Tennessee

IX. **NEW YORK, NEW YORK**

Connecticut; Maine; Massachusetts; New Hampshire; New Jersey; New York; Rhode Island; Vermont

X. **WASHINGTON, D.C.**

Final witnesses, including representatives of: Division of School Assistance in Federally Affected Areas (Education Department); Office of Economic Adjustment, Department of Defense; Office of U.S. Coordinator for Refugee Affairs, Department of State; Immigration and Naturalization Service; Office of Policy Development and Research, Housing and Urban Development; Coalition of Indian-Controlled School Boards.

Within each region, public notice of the hearing was given through a press release, a Federal Register notice, and letters of invitation to present evidence. Letters of invitation were sent to each State Educational Agency and each recipient of Public Law 874 funds. At each hearing, witnesses were encouraged to provide the Commission with specific information regarding the school districts of local educational agencies they represent, through a Guide for Witnesses; to provide the Commission with a written statement for inclusion in the record; and to summarize that statement and be prepared to answer questions for the record.

The Plan of Study required that in support of these hearings, the Research Staff would be responsible for the following:

(1) Creating and maintaining a file on each 874 recipient, including:

  (a) an inventory of all Federal property against which that recipient makes a claim,

  (b) a description of the type of property and the activities conducted on that property,

  (c) an estimate of the number of civilian and military employees of the United States connected with that property,

  (d) a list of the numbers of children claimed by the recipient from 1974 through the current year, by category of the claim,

  (e) a description of the community or region served by the recipient, in terms of geography and economy,

  (f) a report on the school finances of the recipient, and

  (g) a description of the enrollment in the schools of the recipient;

(2) Preparing a summary of the information in the file;

(3) Creating a file on the school financing policies and programs of each State, with emphasis on the effects of the policies on federally-affected local educational agencies;

(4) Preparing briefing papers for the members of the Commission for each hearing, including a summary of the information available for the region in which the hearing was held (with back-up materials) plus suggested questions to be asked of witnesses, designed to elicit information not available in the files and background material on each scheduled witness; and

(5) Reviewing the transcript for each hearing, compiling the views and information in the transcripts, and placing this information in the files.

A. EVIDENCE GATHERED THROUGH THE COMMISSION'S HEARINGS

Introduction

During the course of ten hearings held in Washington, D.C.; Denver, Colorado; Seattle, Washington; Chicago, Illinois; San Francisco, California; Window Rock, Arizona; San Antonio, Texas; Montgomery, Alabama; and New York, New York, the Commission on the Review of the Federal Impact Aid Program has heard from 412 witnesses representing 50 States and Guam, the Department of Education, the Department of Housing and Urban Development, the Immigration and Naturalization Service, and the Department of Defense, the Department of State, and the Coalition of Indian-Controlled School Boards. Official transcripts of those hearings comprise over 3,080 pages.

The task of summarizing that testimony has not been a small one. Much of the information presented by local educational agencies regarding the nature and extent of the Federal presence in their community is irreducible and not generalized easily without sacrificing accuracy. For that reason the scope and the "sense" of the testimony is presented, organized around the following:

(1) views on the proposal of the Education Department to reduce Impact Aid in fiscal 1981;[45]

(2) the tax effort made by local educational agencies to finance their operations, including costs imposed by the Federal Government; this subject includes a look at the results local educational agencies predicted if the proposal of the Education Department were effected;

(3) the nature and extent of the burden imposed by the Federal presence;

(4) additional Federal impacts for which the Government does not compensate local educational agencies, including the cost involving compliance with such mandates as the education of all handicapped children, and the provision of bilingual education;

(5) the need for other, possibly more comprehensive payments in-lieu of taxes to replace or supplement Impact Aid;

(6) revenues lost because alternative use cannot be made of the federally-owned property;

(7) the economic impact of the Federal presence;

45/ See Appendix H for a presentation of Education Department testimony before the Commission. These views are described as those of the Education Department, since testimony offered by other departments of the Executive Branch indicates that other parts of the Administration have views at variance with those of the Education Department.

(8) the Federal obligation for the impact of the Federal presence as currently covered by Public Law 874; and

(9) the special educational needs of federally-connected children.

The Commission is cognizant of the fact that there is a basic philosophical difference between those witnesses who testified in favor of the existing Impact Aid Program and the testimony presented by the Education Department. The evidence offered by the witnesses was evaluated in light of this difference.

The Education Department took the position that education is a State responsibility and that the role of the Federal Government should be limited to ensuring equality of educational opportunity for all children through such programs as those authorized by Title I of the Elementary and Secondary Education Act of 1965, the Bilingual Education Act, the Education of the Handicapped Act, and the Indian Education Act. Assisting local educational agencies in financing the maintenance and operation of their schools--which is the effect of payments under the Impact Aid Program--is not consistent with that policy.

Statements made by representatives of the Education Department made this position clear and indicated that the position of the Department was based on its budgetary priorities--with a limited budget available to the Department, it must place the programs it administers for elementary and secondary education on a scale of priorities; those programs designed to provide special services for those children having special educational needs is given a higher priority than that given the Impact Aid Program.

The testimony and the legislative propositions advanced by the Education Department can be understood only in the context of its budgetary policies.

At the same time, witnesses representing local educational agencies almost invariably used the term "obligation" when speaking about the proper Federal role in education respecting the maintenance and operation of schools affected by Federal activities. The use of that term reflects an attitude that the obligations of the Federal Government should have a higher priority than discretionary choices of the Education Department based upon budgetary considerations. The term "obligation" has a number of meanings--legal, moral, and political--which, unless the use of the term is carefully evaluated, can be confusing. For this reason, testimony about obligation has been supplemented with, and evaluated in the light of, research on the question of what is the obligation of the Federal Government with respect to the burden imposed by its activities.

The testimony of witnesses having a strong interest in continuing the program must be viewed in the context of the threat they perceive in efforts to reduce the size of the program. Some of their statements indicated a belief that a substantial reduction of the size of the program would reduce the number of local educational agencies participating in the program and, accordingly, its political support. Statements reflecting this belief tended not to deal with the merits of the program and their value as evidence was limited.

Standard Arguments

Before summarizing the testimony evidence addressed to those points, it is useful to review briefly the standard arguments offered for and against Impact Aid.

The Education Department argued in its original testimony presented in Washington, D.C., on January 31, 1980, that Impact Aid should be cut because it overcompensates localities who enjoy a net economic benefit from Federal installations. Based on the argument that communities actively seek Federal installations, the Education Department concluded Federal activities must be considered an economic plus. Further, the Education Department argued that if local educational agencies have not been able to tax the influx of wealth such as additional payroll and corporate profits flowing from Federal activities, it is because of ineffective State and local education financing systems and not the responsibility of the Federal Government.

Local educational agencies traditionally argue that in fact communities do not always seek Federal installations actively. In many cases, military bases and similar installations are virtually thrust on a community. Further, while communities fight base closings, the concern is for the short-term unemployment effects of a closing, rather than the long-term economic gain which subsequent private use of a site brings.

Local educational agencies argue there is a Federal obligation to pay for the effects of Federal activities, just as non-Federal employers and landowners pay localities for services provided.

It has also been argued that it is not the place of the Federal Government to dictate State and local taxing and financing arrangements; the tradition of local control of education and concepts of federalism prohibit such a Federal policy.

The Impact Aid Program is further supported, it is argued, because it operates in a fair and efficient manner. Payments reflect actual costs and are based on an actual number of students in attendance; payments go directly to local educational agencies without Federal program requirements attached; Impact Aid allows local control; Impact Aid has the lowest proportion of administrative cost of any Federal education program; and Impact Aid can be used for maintenance and operation, allowing schools to fill budget gaps left by unfunded Federal mandates such as that set out in Public Law 94-142, the Education for All Handicapped Children Act.

Impact Aid payments on the basis of "B" students were defended on several grounds: residential property taxes cannot, alone, support education; no private employers are allowed to pay only that fraction of their commercial or industrial property taxes which are represented by the percent of their employees living only within the boundaries of their political jurisdiction; the impact of large numbers of "B" students is proportionately as great as the impact of large numbers of "A" students; if one accepts the rationale that payments for "A" students are justified, there is no logical reason to reject payments on the basis of "B" students, which are 50 percent of compensation for "A" students reflecting a presumed contribution from residential property taxes.

Views on the Proposal of the Education Department

Local educational agencies around the country expressed disbelief and grave concern over the Education Department's proposal to reduce Impact Aid payments in fiscal 1981 to those local educational agencies receiving "A" payments which amount to 2.5 percent of their total current operating budget or "B" payments constituting five percent of their budget. Local educational agencies questioned the rationality of the proposal, calling into question the validity of cutting an education program on the basis of mere budgetary considerations rather than an analysis of the needs the program meets. Local educational agencies further questioned the procedure they observe annually of Federal budget officers, rather than education policy and program officers, recommending cuts in Impact Aid.

Addressing those budgetary considerations, however, local educational agencies mentioned that it does not make sense to cut Impact Aid--an efficient and well-justified program--while leaving unexamined other Federal programs. Categorical education programs can operate to reduce the absolute number of dollars available to local educational agencies for maintenance and operation and basic instruction.

The Education Department testified that 81 percent of local educational agencies which would lose their entitlement on the basis of "B" children under the Education Department's proposal would suffer a loss which is less than one percent of their total expenditures. No local educational agency would lose more than five percent of its expenditures. Also, 94 percent of local educational agencies cut out by the proposal would suffer a loss of less than two percent of their expenditures. Only one percent of those local educational agencies losing their Impact Aid would absorb the full five percent.

Tax Effort

Hearing from that 81 percent, the Commission was told virtually no loss is absorbed easily. Representatives from those districts pointed out that inflation takes a bite out of budgets yearly. Some representatives of districts admitted a modest increase in local taxes--a single additional mill, for example--would replace lost Impact Aid funds. Others expressed concern that they are not able, legally, to raise taxes or increase expenditures. Nine States have local budget caps; 31 States have local tax limits. It was by far the exception to hear that a local educational agency considered it could absorb a cut in Impact Aid. Quite the contrary, representatives of districts listed the results of a cut such as that proposed by the Education Department. Those results included:

(1) Laying off teachers and other personnel or cutting salaries. The figures of local educational agencies specifying how many teachers would be laid off if the Impact Aid cuts were effected reveal that several hundred teachers would lose their jobs.

(2) Reducing programs and services--ranging from cutting out entire programs such as music and lunch services to eliminating teacher aides and individualized instruction;

(3) Increasing class size;

(4) Reorganizing the district for inclusion in another district;

(5) Refusing to provide a free, public education to federally-connected children; and

(6) Changing the boundaries of a district to exclude a Federal installation from the district.

Oftentimes these effects would mean loss of accreditation, local educational agencies said.

Local educational agencies with heavily impacted school districts cited these disruptions and more, stating that tax increases of as much as 30 percent would be required to replace Impact Aid. Even more dramatic, many heavily impacted schools stated flatly they would have to close their doors if they did not receive their Impact Aid payments.

Fiscally dependent local educational agencies--those with no independent taxing authority which comprise a majority of local educational agencies in nine of the 50 States--stressed the problems they have of requesting tax increases from local units of government under taxing procedures over which local educational agencies have no control. Furthermore, local educational agencies cited the political problems, resulting from changing demographics in the United States today, of lack of political support for public education. One witness pointed out that only one-fourth of the adults in Georgia have children in public schools; the largest portion of the electorate which would have to approve a tax increase has no stake in and may not be supportive of tax initiatives for public schools.

Burden Imposed by Federal Presence

One of the major topics of testimony was the actual burden imposed by the Federal presence in the school district, county, or area that the witnesses were representing. Testimony upon such topics included actual listings of the Federal holdings in the school district, military bases, Indian reservations, numbers of federally-connected students, and local revenue sources. A distillation of all these facts into a meaningful, easily comprehended whole is nearly an impossible task. A complete listing, or printout, of the exact number of federally-connected students, local education revenues, and type and number of Federal installations is available from the computers of the Division of School Assistance in Federally Affected Areas. The percentage of Federal land in each State is as follows:

	Federal %		Federal %
NORTHEAST	2.2	MIDWEST	4.1
1. Connecticut	0.3	*1. Illinois	1.6
*2. Maine	0.7	2. Indiana	2.1
3. Massachusetts	1.9	*3. Iowa	0.6
4. New Hampshire	12.3	*4. Kansas	1.4
5. New Jersey	2.7	*5. Michigan	9.4
6. New York	0.8	*6. Minnesota	6.7
7. Pennsylvania	2.3	7. Missouri	4.9
8. Rhode Island	1.1	*8. Nebraska	1.4
9. Vermont	4.8	*9. North Dakota	5.3
		10. Ohio	1.3
		*11. South Dakota	6.9
		*12. Wisconsin	5.3

	Federal %		Federal %
SOUTH	5.0	WEST	53.5
1. Alabama	3.5	*1. Alaska	96.4
2. Arkansas	9.9	*2. Arizona	43.7
3. Delaware	3.2	*3. California	45.4
*4. Florida	10.4	*4. Colorado	36.1
5. Georgia	5.9	5. Hawaii	9.9
6. Kentucky	5.4	*6. Idaho	66.8
7. Louisiana	3.7	*7. Montana	29.6
8. Maryland	3.3	*8. Nevada	85.8
*9. Mississippi	5.5	*9. New Mexico	33.6
*10. North Carolina	6.4	*10. Oregon	52.4
*11. Oklahoma	3.5	*11. Utah	64.9
12. South Carolina	5.9	*12. Washington	29.1
13. Tennessee	6.7	*13. Wyoming	48.1
14. Texas	1.9		
15. Virginia	9.2		
16. West Virginia	7.0		

* States which have federally recognized Indian lands.

SOURCE: General Services Admnistration.

In grand summary, the Summary Report of Real Property Owned by the United States Throughout the World as of September 30, 1978 (General Services Administration: August 1979), shows the total holdings of the Federal Government are as follows.

The Federal Government owns 23,988 installations in the United States comprising 775.3 million acres, 2,598 million square feet of floor area, and various other structures and facilities.

Federal real property is located in each of the 50 States and the District of Columbia and is worth over $100 billion. Structures and facilities represent nearly $50 billion or half of the total cost of Federal real property in the United States. Structures and facilities owned by the Federal Government include: utility systems; communications systems; roads and bridges; railroads; monuments and memorials; airfield pavements; harbor and port facilities; hydroelectric and other power development projects; reclamation and irrigation projects; underground vaults; sliding shipways' sidewalks, and parking areas.

The 775.3 million acres that the Federal Government owns consist of 711.9 million acres of public domain land and 63.4 million acres acquired by purchase, donation, or other methods. No cost is recorded or reported for public domain land; that acquired by purchase, donation and other methods is valued at $8.8 billion. Acreage owned by the Federal Government consists of forest and wildlife reservations, grazing land, parks and historic sites, Alaska oil and gas reserves, and military fields. In all, nationwide, the Federal Government owns 33.7 percent of all land: 53.5 percent in the West; 4.1 percent in the Midwest; 2.2 percent in the Northeast; and five percent in the South.

The Federal Government owns 406,494 buildings with an acquisition cost of $41.5 billion. The Department of Defense controls more federally-connected building space than any other U.S. agency. The Departments of Interior and Agriculture control more federally-connected lands than any other agencies.

Additional Federal Impacts

The Federal Government imposes burdens on local educational agencies by owning tax-exempt land in districts and by increasing enrollments with children of families who live or work on Federal land. These are the traditional Impact Aid "revenue" and "service" burdens. There are other burdens carried by local educational agencies because of Federal mandates or Federal activities not covered by Impact Aid. Local educational agencies have argued in the hearings that these additional impacts are caused directly by the Federal Government. Because they are traceable to Federal policies or activities, it is argued that Impact Aid should be expanded to compensate for the burden those policies or activities impose.

For example, the Government will pay Impact Aid to a local educational agency based on the number of federally-connected military dependents located within the boundaries of its school district if a military airbase is placed there. But Impact Aid does not take into account that the non-federally-connected properties surrounding the base are highly restricted in their use and yield less tax revenue because of Federal use of the airbase.

The most obvious and direct additional impacts mentioned by local educational agencies are those that stem from Federal laws such as Public Law 94-142, the Education for All Handicapped Children Act. The greatest concern expressed by these local educational agencies is that while the Federal Government requires all local educational agencies to provide a free, appropriate public education to handicapped children regardless of cost, the Federal Government does not support those required services sufficiently. Other impacts arising from this mandate are transportation costs for children who must be bused to a neighboring local educational agency capable of providing special education services. In the case of districts in sparsely populated areas such as Indian reservations, where transportation costs can constitute over 25 percent of a district's budget, transportation costs for handicapped children are especially high. In addition, local educational agencies have additional costs of diagnostic testing, special teachers, and program coordinators.

Another Federal impact arising from a legislative mandate is the requirement that children of limited English proficiency be provided bilingual education. Still another is the prohibition against sex discrimination which requires local educational agencies to provide physical education programs without regard for sex of students. Finally, desegregation orders are a costly matter for local educational agencies, one which many consider federally-imposed.

A military presence causes far greater impacts than the cost of educating military dependents alone. Fluctuating enrollment causes many problems: additional paperwork and record keeping are both costly and time-consuming and the mobile student often has special educational needs. In addition, areas near military bases often have special law enforcement problems. Flight patterns can limit land use and value. Finally, because many enlisted people are in need of Adult Basic Education, local educational agencies have to supply such programs at their own cost.[46/]

Another impact of the Federal Government is the presence of undocumented aliens and refugees. It is argued that these aliens and refugees are here as a direct result of Federal policy. The refugees are here

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[46/] Included as Appendix I is a summary of testimony regarding special burdens local educational agencies bear because of a Federal presence in their community.

because of the Government's resettlement program. The number of undocumented aliens increases because the Federal Government has failed to enforce immigration laws adequately.

Other additional impacts can be listed: cash flow problems (when Impact Aid payments arrive too late, some States will not let local educational agencies substitute funds marked for other purposes); inflation; the removal of portions of the tax base by the construction of highways; declining property values near military bases and low-rent public housing; police enforcement problems near low-rent public housing; and a high staff turnover on Indian reservations and military bases.

Payments in-Lieu of Taxes

The Federal activities recognized traditionally by Impact Aid as warranting compensation are a burden upon local educational agencies. These traditional impacts consist of the Federal Government not only depriving local educational agencies of revenue by reducing the local tax base when it owns real property, but by imposing a cost on schools when children living on Federal land or living with parents working on Federal land must be educated in the local schools. In addition, the concomitant impacts outlined above affect local educational agencies financially.

All local educational agencies welcome Impact Aid as it compensates for traditionally recognized burdens. In fact, it is essential to the operation of the school system in most of the local educational agencies testifying. Impact Aid payments are regarded as in-lieu of taxes payments and are the only Federal funds which the school system can use as general fund money. Most local educational agencies assert that the Government is getting a bargain with Impact Aid, for the payments are far less than they would be if Federal property were taxable. But for this very reason, Impact Aid payments are not adequate compensation for the sometimes overwhelming burden that the Federal presence imposes, and local educational agencies expressed the need for a possibly more comprehensive program of payments in-lieu of taxes (PILOT).

A few local educational agencies testified that they would prefer a comprehensive PILOT program instead of Impact Aid. Virtually every local educational agency providing information on assessed valuation of federally-owned property showed that if the property were taxed at prevailing rates, the local educational agency would yield much more revenue than Impact Aid provides.

The Commission is aware of the fact that a policy in favor of PILOT has been studied by various parts of the Federal Government for many years, both in connection with the Impact Aid Program and with respect to the States and local units of government, generally. A report of the Advisory Commission on Intergovernmental Relations on PILOT has recently been released.47/

47/ R.D. Ebel & J.E. Towles, Advisory Commission on Intergovernmental Relations, Federal Payments In-Lieu of Local Property Tax Payments (1980).

As was the case in the hearings of this Commission, an equitable PILOT program with respect to local educational agencies is difficult to describe, and even more difficult to conceptualize beyond the scope of an individual school district. Inherent in any PILOT program is the question of alternative use of the Federal property. How much revenue would a particular piece of property raise if taxed?

Alternative Uses

A concept related to the revenue a locality would raise if Federal property were taxed is the revenue a local educational agency would gain from the land if the Federal installation had not been there. Most local educational agencies acknowledged that they were unable to say with certainty how federally-owned land would have been used--a determination requiring projections by local planners and land use experts.

Some local educational agencies pointed out with certainty how property owned by the Federal Government would be used. In most cases it was clear that private use of the land would yield the local educational agency more revenue than Impact Aid provides. For example, local educational agencies located near beaches and coasts testified that those areas could easily become revenue-producing recreational areas or sites for development of condominiums and motels.

The school districts of some local educational agencies are located near Federal installations surrounded by valuable industrial, commercial, or residential property. Those local educational agencies testified that private use of the federally-owned land would surely yield more revenue than Federal ownership does.

Local educational agencies with low-rent public housing pointed out that almost any taxable residential unit would produce more revenue annually than the ten percent paid by the Department of Housing and Urban Development in-lieu of taxes.

In each case, if revenue is lost by a local educational agency by virtue of the Federal presence, it is a crucial part of a determination of whether a local educational agency bears a net economic benefit or burden as a result of the Federal presence.

Economic Impact

On the issue of net burden, which is the cornerstone of the Education Department's proposal for cutting Impact Aid in fiscal 1981, local educational agencies were, on the whole, unable to provide the technical and sophisticated information necessary to determine net economic impact. This is not surprising, given that the Commission is breaking new ground in developing a model to conduct an economic impact study. Local educational agencies were, however, able to provide bits of information relating to positive and negative effects of the Federal presence considered alone.

Military installations by and large were seen as having a positive effect on the community, though not necessarily a positive economic effect. Without highly technical information, a community could not tell how much money produced by the multiplier effect actually got back into the school system to provide for the education of military dependents. When citing positive effects, local educational agencies mentioned the stimulating presence of the military, including the advantages of having people in the community with international background and experience.

Representatives from certain States provided examples of extreme negative economic impact--Alaska, for example, where 98 percent of the acreage is owned by the Federal Government. Alaska has virtually no tax base from which to raise revenues for local education expenditures. Deficient tax bases also occur in local educational agencies which are located mostly, if not entirely, upon Indian reservations.

The energy development industry often locates in western areas with extensive Federal ownership. Usually those areas have a small school system with a tax base capable of supporting only a small system. Employment generated by the industry can create havoc for a small system, bringing large numbers of families with school-age children to the area. Economic benefits of the energy industry are limited because the facility brings many of its employees with it to the area. Local employees working in support positions on the installation are often paid below market wages because the facility attracts an influx of job seekers.

In Tullahoma, Tennessee, many employees at the Atomic Energy Development Commission are engineers, chemists, and physicists. They are paid on a higher wage scale than a typical business would pay. Because of the higher wage standards, especially at the facility, other businesses have located elsewhere. This has resulted in a limited industrial tax base.48/

48/ The Commission, using its in-house research capacity, devoted considerable time and expense to supplementing the hearing record on the issues of alternative use of tax-exempt property and the economic impact of Federal activities on local educational agencies.

The hearings were supplemented by site visits by the research staff, led by the Staff Economist. These site visits concentrated on military installations and included such installations located in Chambersburg, Pennsylvania; Bellevue, Nebraska; Waynesville, Missouri; Box Elder, South Dakota; Davis County, Utah; Escambia County, Florida; Portsmouth, New Hampshire; and Norfolk, Virginia. In each of these sites, information was gathered to develop and test a model designed to measure the impact of Federal activities on the finances of local educational agencies.

Federal Obligation for Impact

Local educational agencies addressing the issue of the Federal Government's financial responsibility toward the education of federally-connected children consistently argued that when the Federal Government acts as an employer and a landowner, it should pay its way as other employers and landowners do. Further, local educational agencies said, the Impact Aid statute since its inception has expressed a Federal concern for the education of children of its employees. Thus in addition to purely financial obligations, the Federal Government is obligated to ensure that children of Federal employees have access to a public education as other children have.

A few local educational agencies mentioned the particular problems associated with base closings and decreased Federal activities. In those cases, schools are left with long-term contracts for things such as buildings, buses, books, and other supplies which they do not need because closure of the Federal installation has reduced enrollment. Local educational agencies testified that the Federal obligation in those cases is especially strong.

Local educational agencies testifying at the Window Rock, Arizona, hearing spoke of the special responsibility the Federal Government has for the education of Indian children because of the very large number of treaties which expressly guarantee education for Indian children.

Local educational agencies also testifying at the Seattle, Washington, and San Francisco, California, hearings felt that it is Federal policy that brings refugees into the country and thus into their respective school districts.

Many witnesses used the term "obligation" when testifying; and the hearing record does not make clear its technical meaning or meanings when so used. In fact, its use, generally, was in a loose sense of "what ought to be done"--in the sense of a moral or political (when compared with other uses of Federal funds) obligation. It was in this sense that the hearing record was assessed by the Commission.

Those witnesses who expressed a belief that the Federal obligation was "educational" in nature--that is, an obligation for the education of children in general or for continuing a program upon which local educational agencies had become fiscally dependent--were heard; and due consideration has been given to their evidence. Testimony regarding a Federal obligation arising from a fiscal burden placed upon a unit of local government which has a right to exist and operate under the laws of the States and which, under those laws and the Constitution, must provide a free public education for all children within their jurisdictions, was given a greater weight.

Educational Needs of Federally-Connected Children

Local educational agencies testified that federally-connected children require various special services. Those special needs of military dependents, American Indian students, refugees, and students residing on low-rent public housing projects are summarized as follows:

Military. Military dependents are highly mobile students. The frequency, suddenness, and unpredictability of military reassignment procedures cause serious social and psychological stress on these students. Education programs which are not consistent from area to area can cause children to arrive far behind or ahead of new classmates, generating a traumatic dislike for school which impedes their adjustment to schools. This stress from constant reassignment contributes to the instability of the family and a lack of commitment to become involved in the community. Family patterns are often non-standard. For example: many students live in one parent households because of extended duty on ship by the other parent. These students are frequently out of school for an extended period of time while the family moves from one base to another or from one Government project to another. Absence from school, coupled with the variation in curriculums, creates barriers to the students' learning.

Poverty is not uncommon to military families. Lower military ranks frequently live in public housing and use food stamps at commissaries. A significant number of military parents are married to non-English-speaking spouses, thus creating learning problems for the children. These children lack a sufficient command of English and experience difficulty in classrooms because English is not spoken at home.

Constant turnover in a local educational agency's enrollment creates both financial and administrative problems. Local educational agencies must replace textbooks, workbooks, and other basic materials, in some cases up to 15 percent a year. Mobility increases the need for remedial assistance, additional secretarial and clerical assistance is required for keeping enrollment and transfer records, local educational agencies must provide extra counseling and psychological services to meet the special needs of highly mobile students, and testing for grade placement, achievement, and special education must be duplicated in many cases.

Indian Children. The Commission has heard testimony concerning conflict of values between the public school milieu and the home context of Indian students. An Indian school superintendent observed that the Navajo word for public schools is translated "school of the little white children," and indicated that the honoring of Indian culture in the schools is relatively recent. American Indian students frequently speak their native language at home and come to school with the standard educational needs of non-English-speaking or bilingual children. Concentrations of Indian students in a school district commonly require highly individualized diagnostic teaching, requiring a low teacher/student ratio. Impact Aid funds are commonly used to enable local educational agencies to have the lower teacher/student ratios. The vast distances students must ride by school bus--morning and afternoon rides as long as two hours were cited on the Navajo reservation--requires transportation expenditures by local educational agencies which are unusually high.

Refugees and Illegal Aliens. Refugee families obviously have problems of traumatic relocation. Enormous variations in successive waves of Indochinese refugees have been noted. The children of later "boat people" are commonly observed in public schools to have much greater problems of poverty and usually come from lower echelons of Vietnamese, Laotian, and Cambodian societies. Thus there is usually less family education, and more problems with English. Hostile reception of later refugees perceived to be foreign by other refugees from the same country has often been a problem for Asian refugees, particularly where a threat to the local job market is feared. In addition to basic educational services, local educational agencies must provide these students much more concentrated services in bilingual education, special counseling, and frequent tutoring services.

Children of undocumented aliens also have the problems attendant with transience. Local treatment of the corresponding needs for these children--bilingual education, smaller classes, trans-cultural understanding--varies greatly. It is reported that California has affirmative action programs for such children. Texas, until recent intervening court cases, effectively excluded them by requiring payment of tuition. Their illegal status means children having special problems are in the school system without being officially acknowledged.

Low-Rent Public Housing. Local educational agencies related the added responsibility placed upon them as a result of servicing students from low-rent public housing. These students are often in need of remedial education in basic skills, especially reading. They often need special counseling for problems and pressures associated with poverty. Local educational agencies must provide additional reading skills programs, special teaching services, and added counseling staff to handle the needs of these students.[49]

Public Law 815 (Construction)

Though not within the Commission's mandate for review and evaluation, local educational agencies also testified regarding Public Law 815. Section 10 of that law provides "for the construction of and repair of urgently needed school facilities to house children residing on Federal

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49/ See Appendix J for a discussion of testimony before the Commission regarding Federal involvement in public housing.

properties..." It should be noted that section 10 of Public Law 815 is permanent legislation and is only reviewable through the appropriations process. Since being enacted in 1950, up until 1967, Public Law 815 had generally been funded fully. Since then, however, appropriations have been insufficient to satisfy all entitlements. Fort Bragg in North Carolina, alone, is $20 million behind in repairs and construction; $200 million is estimated to be necessary for repairs and construction for all schools on Federal property.

Local educational agencies reiterated many times that they must use Public Law 874 funds for construction instead of as general operating revenues. Representatives of school districts, particularly those with military bases or high Indian enrollment within their boundaries, have urged the Commission recommend that Public Law 815 be funded fully.

School districts that experience rapid increases in enrollment due to transfer of military employees are hard pressed to find space to accommodate students. Many present section 10 buildings were built in the 1950's and 1960's, and this now poses numerous problems:

1) they need extensive repairs;

2) they are lacking in space and modern facilities;

3) there is an increase in the number of families being placed in on-base housing; and

4) children are in excess of the rated capacity of these buildings, leading to (a) split schooling shifts of reduced hours (morning/afternoon); and (b) requiring locating students in World War II wooden, dilapidated, inferior buildings.

B. RESEARCH OF THE COMMISSION STAFF

The Commission on the Review of the Federal Impact Aid Program was charged by law with "reviewing and evaluating the administration and operation of the Federal Impact Aid Program." Specifically, that law required the Commission to consider --

(1) the equity of the present funding structure;

(2) the relative benefit of Impact Aid assistance; and

(3) the best means of assisting federally-affected local educational agencies to meet educational needs.

The Plan of Study provided that each of the questions likely to be raised during the course of its work would be arranged around these issues and would be the subject of a special study. These special studies formed the basis for the recommendations set out in Chapter IV of this report. The Commission gathered evidence for use in those studies through in-house research and a series of hearings. Part A of this chapter was a summary of testimony presented at the hearings; Part B is a description of the research conducted by the Commission and a summary of the studies themselves.

1) The Equity of the Present Funding Structure

In its review of the equity of the present funding structure of the Impact Aid Program, the Commission has examined the basic premises of the program in order to determine the concepts of equity the Congress used in creating the program and found that the underlying concept of equity then used by the Congress was that local educational agencies ought to be compensated for the burden imposed upon them by Federal activities and that the amount of the compensation ought to approximate the amount of the fiscal burden placed upon local educational agencies by those activities.

With respect to Federal burden associated with real property, the evaluation involved a determination of revenues lost because of Federal laws exempting real property from local taxation and of the cost of educating the children connected with that property; and with respect to burden not so associated, it involved a determination of the cost of educating children in attendance at public schools as the result of Federal activities and policies which do not involve the use of tax-exempt real property.

The Commission studied the definition of Federal property in order to determine whether all real property burdening a local educational agency is included and whether all real property not constituting a burden is excluded from that definition. In determining which real property constitutes a burden, what factors should be considered? It also considered whether the rationale of compensating local educational agencies for federally-imposed burdens includes compensating local educational agencies for the cost of educating the children of refugees and undocumented aliens.

As part of the examination of the existence and magnitude of the burden caused by Federal immunity from local taxation and by the cost of educating federally-connected children, the Commission studied the economic impact of Federal activities on local educational agencies. This study, in addition to gathering evidence from authorities in the field, involved a thorough analysis of a small number of local educational agencies using a model specifically developed for that purpose and site-specific data.

After examining what constitutes a burden on local educational agencies, the Commission considered the fairness of the measure of compensation--based on assumptions about local support of public education--to determine its validity in light of changes in school financing patterns, an increased State role, and the possibility other measures may more accurately reflect the cost of educating federally-connected children.

2) Relative Benefit of Assistance for Impact Aid

The second mandatory part of the evaluation of the Commission was a study of the "relative benefit of the assistance for Impact Aid under Public Law 874 in view of the increasing costs of the program and the limitation on the availability of funds."

This charge presented the Commission with a problem of statutory interpretation. The term "relative benefit" implies, indeed requires, a comparison--but a comparison with what? Is the comparison internal to the Impact Aid Program or is it a comparison with other programs? If with other programs, is the comparison with other education programs or with all other programs funded by the Federal Government? The legislative history of the amendment creating the Commission gave no further clue as to congressional intent.

The explicit reference to "increasing costs of the program and the limitation on the availability of funds" clearly indicated a comparison of costs and benefits--but to whom? A comparison with all Federal programs was impossible. A comparison with other education programs would have been difficult without evaluating those programs, which was beyond the resources available to the Commission. Impact Aid is different from all other education programs in that its payments are non-categorical maintenance and operation funds, while the other programs provide for narrow, Federal purpose, categorical grants. Categorical and non-categorical funds are so different that the only criterion they have in common for comparison involves administrative costs.

With respect to administrative costs, the Education Department could give no estimate for all levels, but it is clear that categorical programs have an administrative cost at all levels which exceeds five percent and runs as high as ten percent, while the administrative costs of the Impact Aid Program are probably less than one percent.

An attempt was made to compare Impact Aid and two other areas which served some of the same children: disadvantaged children living in low-rent public housing property and Indian children living on Indian lands.

The specialized skills of evaluators of education programs in the fields of Indian education and education of the disadvantaged--with whom the Commission would contract independently--were needed to satisfy this portion of the mandate. Procedural complications with the Education Department resulted in inordinate delays in getting the services of experts so that consideration of the relative benefit of assistance under Impact Aid is one of the areas the Commission was unable to complete due to funding and time constraints.

With respect to relative benefit of assistance, internal to the Impact Aid Program, the Commission did consider the effect of the increases in entitlements since 1970 and of no commensurate increase in funding levels for the program to cover these entitlements. Some local educational agencies have fewer non-Federal revenues than others; some are almost totally dependent upon the Impact Aid Program. In these instances, the Impact Aid Program is of greater relative benefit to them than it is to local educational agencies which are not so dependent. If, during any fiscal year, the sums appropriated to make payments on Impact Aid entitlements are so substantially less than those necessary to make full payment on those entitlements that the more dependent local educational agencies receive insufficient revenues to maintain their level of education, then the relative benefit of assistance from Impact Aid must be considered. This issue, however, became a matter of priorities in allocating funds within the program and was considered as a matter under the best means of assisting federally-affected local educational agencies.

3) The Best Means of Assisting Federally-Affected Local Educational Agencies

In considering the best means of assisting federally-affected local educational agencies, the Commission assumed that the Congress intended that, if there is a financial burden placed on local educational agencies, there should be compensation therefor and that, if there is a Federal obligation with respect to the education of federally-connected children, the local educational agencies providing education for those children should be assisted in doing so. These assumptions, when accepted, required an examination of the amount of compensation for that burden and the extent to which Federal, State, and local governments should share in paying the costs of educating federally-connected children and a determination of the extent to which there is an obligation with respect to the education of various categories of federally-connected children: military dependents, Indian children, children in schools operated by local educational agencies which are fiscally dependent upon Impact Aid, children residing in low-rent public housing, and children in federally-operated schools.

In the case of heavily impacted school districts, since their local educational agencies would, if their Impact Aid payments were to fall substantially short of their entitlements, be required to curtail the operations of their schools so substantially as to impair the education of federally-connected children. Thus, any Federal obligation for their education would be defeated.

In connection with these issues, the relationship between Impact Aid payments and State aid to federally-affected local educational agencies and the circumstances under which State aid programs should take Impact Aid payments into consideration were studied.

In addition to the evidence presented during the hearings, the Commission has, as evidence, supplementary information of a type and from sources not likely to be available through the hearing process. This supplementary information has focused on policy questions underlying the Impact Aid Program:

(1) What are the historical and legal principles upon which the program has been based?

(2) How does the program fit into the general scheme for financing public schools and how should federally-affected schools be financed in that scheme?

(3) Is there a net fiscal burden upon local educational agencies resulting from Federal activities? and

(4) What are the educational needs of federally-connected children and how should those needs be met?

Commission research has been conducted in the form of special studies as described in the Plan of Study. The subject matter of the special studies was a combination of issues inherent in the various facets of the existing program and those which appeared likely to arise during the hearing process. The studies were arranged around the three charges given the Commission in its mandate and then around nine questions that this report was designed to address:

1) Should the Impact Aid Program be continued?
2) Should there be basic changes in the Impact Aid Program?
3) How should the term "Federal property" be defined?
4) What is the obligation of the Federal Government with respect to the education of children connected with Federal property?
5) Should local educational agencies educating children in attendance at public schools by reason of Federal law or activities be compensated therefor?
6) Which local educational agencies should be eligible for Impact Aid payments?
7) What should be the amount of compensation?
8) How should funds be allocated among local educational agencies when appropriations are insufficient to satisfy all entitlements?
9) Should the States take Impact Aid payments into consideration in their State aid programs?

I. SHOULD THE IMPACT AID PROGAM BE CONTINUED?

The Commission began its study by addressing the basic question of whether the Impact Aid Program should be continued. In this review and evaluation of the program, two means of gathering evidence were used: (1) the conduct of public hearings at which all interested parties were invited to present evidence, and (2) the conduct of independent research on the economic impact of Federal activities on local educational agencies, the law related to the Impact Aid Program, and the means by which public education is financed.

This question was addressed by examining the legislative history of the enactment of the original law in order to determine the reason the Congress authorized the Impact Aid Program, by reviewing the role of the Federal Government in the field of education as a context for authorizing the program, and by assessing the evidence presented by those who propose reducing the program. On the basis of this study the premises upon which the program was based and the questions regarding their continued validity were set out for analysis.

The premise for the program is that the Federal Government places a financial burden on local educational agencies because its property is immune from State and local taxation and its activities cause children to be in attendance at the schools of those agencies, that this immunity deprives local educational agencies of necessary revenues and the local share of the cost of education for those children must be borne by those agencies, and that, under the federal system of government, the Federal Government should compensate them for that burden.

The major argument advanced against the program was that the present program overcompensates local educational agencies for the burden imposed because the program does not take into consideration the assumed financial benefits which accrue to localities by reason of Federal activities.

These premises were examined to determine their current validity by reviewing the question of intergovernmental tax immunities with a view toward assessing the trends in the law during the past three decades, by reviewing changes in the patterns of school finance and the extent to which those changes affect the program, by questioning the continued need, as a matter of law, for the program under the federal system, and by studying the economic impact of Federal activities on local educational agencies in order to test the assumption that there are net financial benefits accruing from Federal activities.

A. BACKGROUND

Public Law 874, Eighty-first Congress, was enacted in 1950 to authorize payments to local educational agencies to compensate them for burdens placed upon them by Federal ownership of real property and by their provision of educational services for federally-connected children.[50] In so doing, the Congress was attempting to set out a uniform policy for compensating schools having previously authorized a dozen different Federal agencies to provide different kinds of assistance to local educational agencies during World War II.[51] These agencies included the military departments, the Departments of the Interior (both the Bureau of Indian Affairs and the Bureau of Reclamation) and Agriculture, the Federal Works Agency, the Panama Canal Company (which administers the Panama Canal Zone, and the Tennessee Valley Authority.[52]

Three sections of the law were devoted to three situations in which the Congress found that the Federal Government should compensate local educational agencies for financial burdens imposed upon them by Federal activities. Section 2 of the law was directed toward the situation in which the Federal Government has imposed a substantial and continuing

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50/ Act of September 30, 1950 Pub. L. No. 874, 81st Cong., 2d Sess., §1, 64 Stat. 1100-1101 (current version at 20 U.S.C.A. §236 (1974 & Supp. 1978)).

51/ H.R. Rep. No. 2287, 81st Cong., 2d Sess. 5 (1950).

52/ Legislative Reference Service, Library of Congress, Education of Children Living on Federal Reservations and Localities Particularly Affected by Federal Activities, Senate Committee on Appropriations, 81st Cong., 1st Sess. 60-61 (Comm. Print 1949).

burden by acquiring a considerable portion of the real property in a school district of a local educational agency, depriving it of a considerable portion of its tax base. Section 3 was designed for situations in which the Federal Government, by owning tax-exempt property on which children reside or on which their parents are employed, has imposed upon a local educational agency the burden of educating those children while withholding the opportunity to meet that burden by taxing that property. Section 4 was designed to apply in situations where the establishment or reactivation of Federal activities in an area increased school attendance so suddenly and substantially that the affected local educational agencies could not adjust financially.[53]

The Rationale. The underlying philosophy of section 3, the major part of the law, was that the Federal Government, as a property owner, should pay to each local educational agency an amount for each federally-connected child roughly equivalent to the amount per child which other property owners in comparable communities pay toward the cost of educating children. Federal payments under section 3 were intended to be more closely related to the burden imposed than to the value of the Federal property.[54] The amount of payments was computed based on a "local contribution rate," through which the payment per child was equal to the current expenditures per child made from local sources in the local educational agency in the State which are comparable to that of the federally-affected local educational agency.[55]

Federal Neutrality. In enacting Public Law 874, the Congress did not intend to affect the means by which schools were financed under the laws of the States or to direct those schools respecting the manner in which federally-connected children were to be educated.

In fact, the now traditional "no Federal control of education" clause was first enacted as part of Public Law 874, which originally provided that "In the administration of this Act, no department, agency, officer, or employee of the United States shall exercise any direction, supervision, or control over the personnel, curriculum, or program of instruction of any school or school system of any local or State educational agency."[56]

Public Law 874 was intended to operate under existing school financing patterns in the various States. The Congress presumed that most local educational agencies met the local share of the cost of educating children from revenues derived from taxation of real property. It was determined that approximately half of the real property tax required to meet the local share of the cost of educating a child was derived from taxation on residential property and half from taxation on commercial or other real property; and, therefore, the method for computing the amount of payments was designed to provide all of the local cost of educating a child residing on Federal property with a parent employed on Federal property and one-half thereof for a child whose parent was employed on Federal property.[57]

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[53] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 5 (1950).

[54] Id. 11.

[55] Id. 12.

[56] Act of September 30, 1950, Pub. L. No. 874, 81st Cong., 2d Sess., §7(a), 64 Stat. 1107 (current version at 20 U.S.C.A. §1232a (1974 & Supp. 1978)).

That being the case, the Impact Aid Program should be reviewed not as a program designed for the improvement of education, but as a program to assist schools under existing State school finance laws which have incurred a burden impairing their ability to finance their operations under those laws. Impact Aid should not be considered an education program in the sense that other programs of grants to local educational agencies by the Education Department are Federal education programs. Impact Aid payments carry with them no Federal education policy; it is not a categorical program as are other Federal education programs; funds are made available to local educational agencies to assist them in carrying out local educational policies under the laws of the States. Except for a brief period, when payments with respect to children in low-rent public housing were required to be expended for the education of disadvantaged children,[58] Impact Aid payments have never been subject to Federal direction or controls respecting their use. They are to be used in the same manner as local educational agencies use the funds they derive from local sources. This is only logical since Impact Aid funds are compensation for the local revenues necessary to support the education of federally-connected children.[59]

With this by way of background, the Commission has conducted its review and evaluation of the Impact Aid Program by examining the underlying premises of the original law (and the amendments thereto) and the context in which the Congress has acted. This examination has been followed by a study of the changes in that context during the past three decades in order to determine the extent to which those premises continue to be valid. This has involved a review of the history of the involvement of the Federal Government in public education, the role of Impact Aid in the relationship between the Federal Government and the States, and the propositions for reducing the program.

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[57] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 11 (1950).

[58] Between July 1, 1976 and October 1, 1979, section 5(f) of Public Law 874 placed a restriction on the use of these funds.

[59] Federal control over the use of Impact Aid funds may be the reason that the Impact Aid Program has a low priority in the Education Department. See the Statement of Dr. Minter, at p. 115, infra.

B. FEDERALISM AND EDUCATION

Public Education as a Traditionally Local Field of Governmental Activity. The Constitution is silent on the role of the Federal Government in education. Even though a contention could be made that a Federal policy role in the field of education is among the implied powers of the Congress, the adoption of the Tenth Amendment to the Constitution has made such a contention more tenuous, so that public education is viewed as a State function.[60]

The Federal Government has actively encouraged and assisted the States to assume responsibility for public education, and to establish and operate school systems. Prior to the adoption of the Constitution, the Congress, under the Articles of Confederation, had, in approving the Northwest Ordinance, begun a policy of the support for schools.[61]

As the States were admitted to the Union, the Federal Government, in an effort to encourage the States to establish public school systems, granted lands to the States for the "use of schools."[62]

Between 1960 and 1979, the Congress appropriated more than $50 billion for elementary and secondary education, primarily for the purpose of improving the quality of education in public schools.[63]

60/ Recent trends toward greater involvement of the Federal Government in the operation of public education have not been based upon any theory in favor of a substantive role of the Federal Government in education, but upon the effect of education on rights and privileges guaranteed to individuals under the Constitution. This involvement has not been the result of Federal education policy nearly so much as the result of efforts toward equality of opportunity under the law.

61/ Section 14 of "An ordinance for the government of the territory of the United States northwest of the River Ohio" provided articles of compact between the original States and the people and States in that territory. The first sentence of Article III, thereof, reads as follows: "Religion, morality, and knowledge being necessary to good government and happiness of mankind, schools, and the means of education shall forever be encouraged." (Northwest Ordinance, Article III, 1 Stat. 51 (July 13, 1787)).

62/ Fla. 5 Stat. 788, §1; Ill. 3 Stat. 428, §6; Indiana 3 Stat. 289, §6; Iowa 5 Stat. 789, §6; Kansas 10 Stat. 277, §34; Neb. 10 Stat. 277, §16; N.M. 9 Stat. 446, §15; Oregon 9 Stat. 323, §20; Wash. 10 Stat. 172, §20; Wisc. 9 Stat. 56, §7; Arizona 36 Stat. 557, §25; Colorado 12 Stat. 172, §14; N.D. & S.D. 25 Stat. 676, §10; Idaho 12 Stat. 808, §14; Minn. 11 Stat. 156, §5; Montana 13 Stat., 85, §14; Nev. 12 Stat. 209, §14; Ok. 26 Stat. 81, §18; Utah 28 Stat. 07, §6; Wyoming 15 Stat. 178, §14.

63/ National Center for Education Statistics, *Digest of Education Statistics 1979*, at 166-167 (1979).

The silence of the Constitution, together with active Federal encouragement and assistance to the States, has resulted in education's becoming one of the historically "local fields" of governmental activity.

As public education developed under the laws of the States, a pattern of school finance and control emerged, under which revenues for the support of schools was derived from State and local sources and policy control was placed at the local level. That pattern is not uniform throughout the Nation. In almost all States, however, the control and financing of public schools was vested in units of local government which, in Federal law, are called "local educational agencies." In most States local educational agencies were organized with school districts in which the local educational agencies were given taxing authority, and, as such, these agencies became special purpose (as opposed to general purpose) units of local government.

Local educational agencies appear to have evolved from the school committees of the New England town meetings which had, even before the Revolution, become independent of general purpose units of local government.

As public education became an expected governmental function with greater significance than other local governmental functions (in that it had more daily contact with the people), the grant of independent taxing authority became a general rule, especially in the Midwest and in the West. That authority was vested in local school boards which also had the administrative functions, defined by State laws, necessary for the provision of, and control over, public education. Thus, the tradition in favor of local financing and control of education developed and became deeply imbedded in the system of government.

The Uses of Real Property Taxes for Education. With the enactment of compulsory attendance laws, adequate sources of revenue from tax sources became necessary if local educational agencies were to have sufficient funds to comply with their obligation to provide free public education under those laws. A nearly uniform practice of taxing real property for the support of education was adopted throughout the Nation.

The use of land grants for the support of schools and the delegation by the States of the authority to tax real property to local educational agencies for their support resulted in a strong association between land and education. At a time when the vast majority of the citizenry earned their livelihood through agriculture, this association may have appeared to be more rational than it does at this time, when the economy is not tied so closely to agriculture.

The State Role in Financing Public Education. Beginning about 1900, concerns were being expressed about the inequities which arise from inequality of the tax-base among local educational agencies within States. By the 1920's the States had begun to make payments to local educational agencies which were intended to diminish these inequities and a number of different approaches to State aid were employed in this connection, so that the degree to which the cost of education in public schools was paid from real property taxes became less in States having State aid for education.

With State contributions to education having become a significant factor in school finance in the majority of States, the concept of State share and local share of the cost of education developed in the general school finance pattern, even though some States provided little, if any, contributions. This decrease in over-all reliance upon real property taxes for the support of public schools (the State share generally was from revenues derived from non-property taxes) did not mean that the local share was much less dependent upon property tax. Whereas 99.6 percent of local revenues for education was derived from property tax in 1925 (constituting 78.5 percent of total revenues for public education), in 1946, 97.9 percent of local revenues was derived from property taxes (constituting 62.6 percent of the total). During that period total revenues for education increased by approximately $1.3 billion, of which approximately $700 million was from State sources and $600 million was from local sources.

At the time when the Impact Aid Program was first authorized this pattern of financing schools had become fully developed and, to the extent that the financing of education was reliant upon real property taxes for revenues, it was nearly uniform in that almost all local revenues were derived from real property.

In summary, both Federal and State actions created public education as a traditionally and historically local field of governmental activity; and that activity, to the extent that it was financed at the local level, was dependent upon revenues from real property taxes.

The Effect of Federal Ownership and Use of Real Property. The necessity for preserving the independence of the dual system of Federal and State governments under the Constitution creates an immunity of all properties, functions, and instrumentalities of the Federal Government from State and local taxation, unless the Congress expressly confers a right to tax them.[64]

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[64] M'Culloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819); Smith v. Davis, 323 U.S. 111 (1944); Jaybird Min. Co. v. Weir, 271 U.S. 609 (1926); Kern-Limerick, Inc. v. Scurlock, 347 U.S. 110 (1954).

The ownership and use of land by the Federal Government, if it is substantial, can have a detrimental effect on the ability of a local government which relies upon revenues from real property taxation to function, and, therefore, if the land owned by the Federal Government is so substantial within the area the local government has jurisdiction to tax so as to deprive it of necessary revenues, the ability of that local government to function is diminished and may, if the diminution is great enough, threaten its existence as a viable government.

This potential conflict between the power of the Federal Government under the Constitution and the right of the States and their subdivisions to exist under the Constitution is a natural consequence of the division of sovereignty made by the Constitution when a federal system of government was adopted by the formulators of our Government.

The equities involved in that conflict may be examined through an assessment of --

(1) the nature of Federal and State sovereignties in the United States;

(2) the revenue-raising ability each level of government enjoys as an incident of its sovereignty;

(3) the jurisdiction over those sources of revenue;

(4) the extent to which the Federal Government can affect the ability of the States and their subdivisions to raise revenue without endangering the federal system; and

(5) the means by which the Federal Government can ameliorate the effects of its interference by compensating for lost revenue.

Federal immunity from State taxation and a concomitant public policy, espoused by the Congress by payments to local governments, in favor of compensation for that immunity is the political context in which the Impact Aid Program was first developed and continued.

Federal and State Sovereignties. Both the Federal Government and the governments of the States are sovereign and derive their power from the people and exercise that power directly, concurrently, on the people. To the extent that a governmental function is vested by the Constitution in the Federal Government and there is a conflict between the exercise of that function by the Federal Government and the exercise of a function by a State, the Federal Government is supreme. The powers of the Federal Government are enumerated in the Constitution. Those not so enumerated are within the sovereignty of the States.[65]

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[65] M'Culloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819).

Each State has its own government and is endowed with all of the functions essential to seperate and independent existence. The States can exist independently; without the States there is no Federal Government. The Constitution vested some aspects of the powers of the States in the Federal Government. It contains, however, many provisions which recognize the necessity of the States and their independent authority. The Federal and State governments are different "agents and trustees of the people, constituted with different powers and designated for different purposes."[66]

Revenue Raising Ability. Taxation is indispensable to the existence of the States and to that of the United States. It is an essential function of government. The Constitution gave the power to tax, both directly and indirectly, to the Federal Government and, subject to some limitations, that power was given without any express reservation.[67]

Federal and State governments have concurrent powers to tax the same subjects. The Constitution does lay down limitations on both the Federal power to tax and that of the States. The Federal Government may not tax exports; its indirect taxes must meet the condition of uniformity; and its direct taxes (other than income taxes under the Sixteenth Amendment) must be in proportion to the population of the States.[68] The States may not tax when the effect is to burden or embarrass the operations of the United States. The Constitution does not authorize the Congress to abridge the powers of the States to tax.[69]

Jurisdiction over Sources of Revenue. Both the Federal Government and the States have the power to levy a tax on real property. The Constitution does not expressly limit that power with respect to the States; but it does with respect to the Federal Government.

Direct taxes must be apportioned among the States in proportion to the population counted in the Census. This limitation has been construed as a limitation upon capitation taxes and real property taxes (as well as, before the Sixteenth Amendment, rents and incomes from real property).[70]

The Federal Government has levied a direct real property tax in times of war or threats thereof, including the Act of July 14, 1798, the Act of August 2, 1813, the Act of January 9, 1815, and the Acts of August 5, 1861, July 1, 1862, March 3, 1863, June 30, 1864, March 3, 1865, March 10, 1866, March 2, 1867, and July 14, 1870. Such a tax was intended to be only one of last resort, when revenues from other sources were insufficient to meet the needs of the Government.[71] It has not been used otherwise; and, since such a tax could be both awkward in assessment and, by its nature, not based on ability to pay, the time when the Federal Government would exercise this authority may have passed. Therefore, the use of real property taxes for revenue may, in practice, be considered exclusively within the jurisdiction of the States and an incidence of their sovereignty which could not be usurped, but for the supremacy of the United States in its immunity from State taxation.

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[66] *Lane County v. Oregon*, 74 U.S. (7 Wall.) 71, 76 (1868).

[67] *Id.*

[68] *Springer v. U.S.*, 102 U.S. (12 Otto.) 586 (1880); *Pollock v. Farmers' Loan and Trust Company*, 157 U.S. 429 (1895).

[69] *Id.*

[70] *Pollock*, 157 U.S. 429 (1895).

Possible Limitations on Federal Immunity. The application of the principle of Federal immunity from State taxation has required the courts to discern many fine distinctions in order to maintain the essential freedom of the Federal Government in performing its functions, without unduly limiting the taxing power which is equally essential to both the Nation and the States under the dual system.[72] Federal ownership of property clearly immunizes it from State taxation, yet the immunity goes further.

The Supreme Court has not, at this time, set a limit on the exercise of congressional power to acquire property, create Federal instrumentalities, and exempt them from State and local taxation and, in so doing, limit the States and their subdivisions in their ability to raise revenue. The fact that the Congress can withdraw real property from the tax rolls and may possibly embarrass the finances of a State or one of its subdivisions, and the wisdom of doing so, is for the consideration of the Congress, not the courts.[73]

Ameliorating the Adverse Effects of Federal Immunity. The Impact Aid Program is the result of such a consideration; and it is a means by which the Federal Government can and, to some extent, does ameliorate the adverse effects of its interference with the ability of local educational agencies to raise revenue, by compensating them for the loss thereof.

With this by way of legal and political background, it is reasonable to conclude that a prima facie case can be made for the continuation of the Impact Aid Program; and a presumption should lie in favor of its continuation. That being the case, evidence was sought to rebut that presumption.

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[71] Id.

[72] James v. Dravo Contracting Co., 302 U.S. 134, 150 (1937).

[73] Federal Land Bank v. Bismarck Co., 314 U.S. 95, 104 (1941); Board of Commissioners v. Seber, 318 U.S. 705, 718 (1943).

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C. EVIDENCE FOR REDUCING THE IMPACT AID PROGRAM

Since most of the official proposals for reducing the Impact Aid Program over the course of the previous 15 years had come from the predecessor of the Education Department (the Office of Education), the Secretary of Education was invited to open the hearings with a presentation of the views of the Department on Impact Aid. The Commissioner of Education appeared on behalf of the Secretary on January 31, 1980. The following is the substantive part of the statement made:[74]

> Over the past 15 years there have been two major mandated studies of the Impact Aid Program along with some lesser analyses. While each study has recognized the existence of a Federal impact, none has been able to do much with the question of the degree of net impact of Federal installations on the community. We do know that Federal installations are actively sought by communities. There are some rare exceptions, for example, where there may be a nuisance or potential danger from these particular activities. This is done with the full knowledge that Federal property is tax exempt and that the influx of new workers and their families may require additional services. The assumption must be made, therefore, that most communities consider such activities a net economic plus. We also know that most communities vigorously oppose closing of bases or moving of Federal activities.
>
> Part of the problem is that the financing of school districts has been traditionally tied heavily to property taxes. School districts have not in most cases been able to tax the influx of wealth which takes the form of additional payroll or corporate profits derived from Federal expenditures. However, this can be viewed as an ineffectiveness of the State and local educational financing systems and not necessarily a responsibility of the Federal Government. Congress recognized this possibility by asking you [the Commission] to coordinate your activities with the School Finance Panel authorized in the same law.
>
> While reductions in payments to some of the wealthiest districts have been made in recent years, the assumption of this Administration, in the absence [of evidence] to the contrary, is still that the Federal impact entitlements under existing law far overstate the need.

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[74] Transcript of Hearing before the Commission on the Review of the Federal Impact Aid Program, Washington, D.C. 7-11 (January 31, 1980).

[Education Department statement, continued]

We proposed, therefore, as part of our Fiscal Year 1981 budget procedures, modest reductions in the payments under the "A" provisions of Public Law 874 and drastic reductions in the payments under the "B" provisions.

Our view is that there is little justification for "B" payments, children whose parents work or live on Federal property, but not both, since most of these payments are for children whose parents live on property which is subject to regular property taxes and whose income is subject to State and local taxation.

The children living on Federal property only amount to a minor number of pupils and affected districts. Whether the State is passing on to the local districts a fair share of the income or sales tax receipts, or even tapping that potential source is a separate but related issue...

In the case of public housing children, the Federal Government initially provided capital funds to help eradicate slum housing which produces little in property taxes. In addition to easing a local problem, such housing does provide in-lieu of tax payments to local government.

...[T]he Impact Aid legislation is some of the most complex of all Federal law, and undoubtedly the most complex of Federal education laws. To bring about the reductions in the Fiscal Year 1981 budget in the simplest possible way, and to avoid the complexities of that law, we have built upon the language of the Continuing Resolution for Fiscal Year 1980 and have added levels below which no payments to school districts will be made.

To qualify for "A" payments in Fiscal Year 1981, a school district must be eligible in Fiscal Year 1980 for an amount which equals at least 2.5 percent of its school year 1979-80 total current operating expenditures. To qualify for "B" payments, the eligible amounts have to be equal to 5 percent. The eligibility levels would be based on the 1980 payment schedules and could not exceed the Fiscal Year 1980 payment. We would continue to make payments for the Special Provisions, sections 2, 3(e), and 4, except that payments for section 3(e) [sic] would be eliminated.

Payments to Federal agencies for federally-supported schools, under section 6, would be made in full with actual increases for Fiscal Year 1981. We would continue the major disaster provisions utilizing carryover hold-harmless funds, but would increase the required loss from the existing half percent or

[Education Department statement, continued]

> $1000 to the lesser of 5 percent or $10,000. All of the above changes will be sought both by authorization legislation and appropriation language changes.***
>
> Public Law 874 was first funded in 1951. That year 1,172 school districts, less than 2 percent of the total, with 512,000 federally-connected children received a total of $29,600,000. In 1979 payments were made to 4,308 school districts, over 25 percent of the total, for 2,291,060 children at a cost of $786,100,000. Actual authorization in that year was over $1.25 billion. We do not believe that these current levels are justified either in terms of actual Federal impact or in the priority allocation of scarce Federal dollars.

In order to give proper weight to the views of the Department, the Chairman asked the following question and received the following response:[75/]

> MR. ROGERS:[76/] ...is there any possibility that this dramatic cut was a result of saying we only have so much money left over, and use it for the most pressing needs, or was this proposal developed independently of any overall budget restraints?
>
> MS. BEEBE:[77/] The policy to reduce Impact Aid payments was developed independent of general budgetary considerations. It was on policy grounds. Every President since Truman has tried to reduce the Federal payment under this program. The particular proposal that was developed was only one of many that we looked at, and it was submitted without consideration of the whole budget ceiling.

The essence of the Department's position was a belief that there was a positive impact from Federal activities as follows:[78/]

[75/] Transcript of Hearing before the Commission on the Review of the Federal Impact Aid Program, Washington, D.C. 23-24 (January 31, 1980).

[76/] Harold E. Rogers, Jr., Chairman, Commission on the Review of the Federal Impact Aid Program.

[77/] Ms. Cora Beebe, Director, Division of Planning and Budgeting, Office of Education, Department of Health, Education, and Welfare.

[78/] Transcript of Hearing before the Commission on the Review of the Federal Impact Aid Program, Washington, D.C. 34-35 (January 31, 1980).

[Education Department statement, continued]

MS. JACOBS:[79] There are certain points of evidence that would...contradict the notion that these activities are a burden. You would have to have that kind of political evidence.... [W]hen we looked at property values for districts, we had some data on equalized property values by State, it turns out that most of the Impact Aid districts are relatively well-off in terms of property wealth compared to other districts in their State.[80]

MR. ROGERS: Do you know of any studies that exist right now which we could turn to which could document these positive impacts,...[which] demonstrate...the positive impact--that [the]...tax revenues that are available to a local school district are in excess of 10 percent, and all you are doing is asking them to absorb 5 percent of that. Maybe it is between 10 and 20 or 30 and 40 or some figure.

In other words, do you know of any studies that exist that would lay this problem to rest, or is it still very nebulous and possibly going to be developed?

MS. JACOBS: I think it is still very nebulous. Again, the only one I can point to is the one that developed models for looking at this. We didn't undertake that. It was well beyond our resources, the scope of our resources, and in fact, I feel pretty confident that the kinds of things that we did, which was to look at the district characteristics, can give you a pretty good idea of where that money is going, what the districts look like, and attributing that to one fact or another, I think is--I am not sure that it can be done with any great accuracy.[81]

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[79] Ms. Martha Jacobs, Office of Assistant Secretary for Planning and Evaluation, Office of Education, Department of Health, Education, and Welfare.

[80] This statement is apparently based upon pages 42-52 of Ginsburg (Lawrence L. Brown, III, Alan L. Ginsburg & Martha Jacobs, Impact Aid Two Years Later, An Assessment of the Program as Modified by the 1974 Education Amendments 42-52 (1978)). The statistical data provided therein simply do not support this statement; and there is no evidence provided therein which would indicate a correlation between Federal activities and relative wealth of property in school districts.

[81] Apparently this reference to "models" is regarding a proposal for developing an economic impact model by the National Planning Association. That proposal served as the beginning point for the model developed by the Commission and is described elsewhere in this report.

[Education Department statement, continued]

In the Commission's second request for an appearance by the Education Department, the Commission had expressly asked the Department to provide information without regard for budgetary considerations in order that the Commission could evaluate the program on its merits, avoiding, to the extent possible, the political implications inherent in budgetary considerations. (The text of the letter requesting this information is included as Appendix K.) The Department replied that it was not possible to do so, and gave essentially the same statement at its second appearance on May 28, 1980. The substantive part of that statement was as follows:[82]

> DR. MINTER:[83] ...In your letter requesting our testimony, you asked if we would provide evidence in addition to that presented by Commissioner Smith in his January 31 testimony to support the reduction in Impact Aid.
>
> The arguments presented during previous testimony represent the central reason for Administration-proposed reductions in Impact Aid. These arguments are based on several major investigations of the Impact Aid Program, the latest of which was published in March, 1978, by the Department of Health, Education, and Welfare. For the most part, the findings of that study remain applicable despite changes in the Impact Aid law made in the education amendments of 1978 of Public Law 95-561. Moreover, the 1978 study reinforced many of the findings of an earlier evaluation conducted by the Battelle Memorial Institute and released in 1970.[84]
>
> These studies have identified three major problems with the Impact Aid Program: first, payments are made to districts which appear to suffer little or no burden and may even benefit from Federal activities. For example, our 1978 study found that the Impact Aid payments to districts with low percentages of Federal children are small when compared with other revenues.

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[82] Transcript of Hearing before the Commission on the Review of the Federal Impact Aid Program, Washington, D.C. 7-10 (May 28, 1980).

[83] Dr. Thomas K. Minter, Assistant Secretary for Elementary and Secondary Education, Department of Education.

[84] If this statement is intended to mean that the recommendations of the Battelle Study support the Department's position, it is a misrepresentation of those recommendations. The Battelle Study did find that some local educational agencies had Impact Aid entitlements which, if funded fully, may result in overcompensation for the Federal burden. This finding of overcompensation was made specifically with respect to some local educational agencies using the "comparable district" method of computing local contribution rate and not a general finding of overcompensation.

[Education Department statement, continued]

Second and related to the above, payments are made under Impact Aid to children who are not associated with a substantial burden that is federally-imposed upon a district. Some "B" payments--$97 million in 1980--are made despite the fact that they are for children whose parents live on property which is subject to regular property taxes and whose income is subject to State and local taxation.

Other payments are made for public housing children despite the fact that public housing is locally rather than federally-owned and the Federal Government provides substantial aid to the communities through housing subsidies, debt service guarantees and in-lieu of taxes payments.85/

Third, methods used to calculate entitlement based on local contribution rates have been criticized as imprecise, resulting in considerable windfall payments because they rely on criteria that may [not] reflect the impact of Federal activities. The comparable district method provides a poor approximation of what local education costs would have been in the absence of Federal impact. In effect, districts are able to maximize their Impact Aid payments by selecting the most favorable districts for comparison. For example, the HEW study found that in 1976 the local contribution rate in districts using the comparable district method averaged 42 percent higher than it would have been had the most favorable minimum rate been used. Our budgetary and legislative proposals over the last three and one-half years have attempted to address these and other problems identified in the studies which have been conducted.

However, no study has been able to identify the precise, net impact of Federal installations on the community. We do know that Federal installations are actively sought by communities and we assume that they act in their own economic self-interests.

Based on available information and in the absence of any data to the contrary, the Administration continues to conclude that entitlements under the existing law far overstate the actual burden imposed by the Federal Government. Moreover, it is important to realize that compensation for Federal burden is the central reason for the existence of the Impact

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85/ For an examination of these payments and the legal status of public housing, _see_ pages 275 to 285 and Appendix L of this report.

[Education Department statement, continued]

> Aid Program. Its purpose is not, as some would argue, to provide a general program of aid to education.[86]

On the question of priorities, the following exchange occurred:[87]

> DR. MINTER: ....As we administer those progams, again enacted by the Congress, of regulations that have been overseen by the Congress for identifying those children and established eligibility, and then...we monitor the programs and make sure that the programs are of quality and are focused on the children for whom they were intended. In other words, they want to carry out the intent of the Congress. It does cause for a larger staff, which is one of the questions that we responded to earlier, and it--and then we get the differences in programs and program priorities. Impact Aid is not a sharply focused program.
>
> Impact Aid, as we know, flows to school districts on the basis of a general entitlement. It does not establish a need criteria for individual students. It is on that basis that I have articulated the position that our priorities are set on advancing supplementary funds and services for those students who are most in need, and Impact Aid does not fall in the uppermost of that category.
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> MR. BOLSTAD:[88] I appreciate the detail....I have been very curious why that carry-over philosophy went from Administration to Administration....I have not found anyone who is

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86/ Testimony presented by John Lynch, Assistant Director, Office of Economic Adjustment, Department of Defense, disputes this assumption. The Office of Economic Adjustment works with communities in helping overcome dislocation caused by closure of military installations. Lynch laid before the Commission evidence which tended to show that civilian reuse of military installations after their closure resulted in greater employment with a more diversified economy than had been the case when those installations were used as military facilities. [Transcript of Hearing before the Commission on the Review of the Federal Impact Aid Program, Washington, D.C. 100-136 (May 28, 1980).]

87/ Transcript of Hearing before the Commission on the Review of the Federal Impact Aid Program, Washington, D.C. 32-35, 39-40 (May 28, 1980).

88/ Mr. Edward C. Bolstad, Commissioner, Commission on the Review of the Federal Impact Aid Program.

[Education Department statement, continued]

living high on an Impact Aid [payment] and I have not found a school district--at least those that have brought testimony to us--that they are going to be able to handle this cutback as easily as I get the feeling you might think it is.

DR. MINTER: I don't think, Sir, that our position is taken lightly, that we have come to this position lightly. We are forced in the position, again, [due to] the allocation of scarce resources and--

MR. BOLSTAD: Let me interrupt. I know that, and again, it is difficult for all of us because you are the first ones who have testified before this body that have given us the other side.... We hear only the advocates. I wish we could hear somebody telling us why this has to be done. So for that, I appreciate what it is you are saying. However, you say you have to allocate scarce resources and yet you have just told me that the policy of several administrations has been to look at priorities because Impact Aid is not categorical aid and it was not a high priority. I don't think we can place all of the blame on the current Congress or on the current President's idea of limiting resources, because the philosophy of where Impact Aid is in your priorities has come through several administrations. It is a cart and horse kind of thing. Does the philosophy come first or does the cutback come first?

DR. MINTER: The attempt to cut back on this type of total expenditures, I think if we trace the Federal Government's involvement in education, that...the Federal Government has always been very cautious in taking a massive role in education, because it isn't well-defined or not defined in the Constitution as a State and local responsibility. We have always targeted those monies to certain priorities that were considered national priorities and priorities that would benefit categories of citizens or would establish programs that would be in the national interest. As we moved into [the Elementary and Secondary Education Act] of 1965, we moved into the largest and most massive program of Federal aid to elementary and secondary education in the history of the Nation.***

I think it is significant that Title I of that Act--the very first title--is focused on the education of disadvantaged and is to provide equal educational opportunities for those

[Education Department statement, continued]

citizens who are most disadvantaged. I don't mean to imply that you go right down to Article X and then you find that is the least priority. I don't mean that and I don't want you to interpret it that way, but the basic function of our involvement--the Federal Government's involvement--in education, I believe, and I think I am representing the Department's position and the position of previous Administrations, that it is mainly to provide categorical aid and to identify those students who are most needy, and then to allot funds and eliminate the discrepancy between various of our citizens.

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MR. DAVIS:[89/] As was pointed out through several administrations, Impact Aid has always been a target for reductions, and with the number of school districts that will no longer be receiving Impact Aid, if those cuts go through, even the super impact district--many times these districts have large numbers of Indian children. Although they are not going to be affected as these particular districts will be this year or the next year, there is a little bit of concern that as shifts are being made, they will in some way fall through the cracks.

This is being viewed as a major step towards not only reduction of Impact Aid monies, but perhaps maybe elimination of the total program as a whole. And that as you look three, four, five, ten years down the road, those districts that have a great number of Indian children need Impact Aid for their existence and there is a lot of concern there. Any comments on that?

DR. MINTER: Yes. In the matter of the total elimination of Impact Aid, I think that is a policy question that I am not prepared to respond to at this time, but I can say in terms of support for Indian children that--and I think I should say in terms of the reduction, the relationship between the reduction of Impact Aid and other areas of the budget--that very often trade-offs are made within the budgets, and that if Impact Aid is reduced, I hope that that money will be moved to another section of the budget where it is still targeted on children who are in need. So that would not imply that Indian children would not continue to be served, but maybe through some other mechanism.

[89/] Mr. Anselm G. Davis, Jr., Commissioner, Commission on the Review of the Federal Impact Aid Program.

The statements of the Department may be summarized as follows: (a) that the Impact Aid Program overpays local educational agencies, in that entitlements are greater than the financial burden placed upon them by Federal activities, (b) that in most instances the economic benefits of Federal activities to localities compensate for the burden placed upon them by those activities, (c) that if those benefits are not available to local educational agencies, it is the result of ineffective State and local educational financing systems, (d) that the Government must take budgetary constraints into consideration and set priorities among education programs on the basis of those constraints, and (e) that other education programs have a higher priority with the Education Department than that given to Impact Aid.

No other witnesses before the Commission in public hearings gave any evidence that the Impact Aid Program should be discontinued or reduced. Almost all witnesses contended that the program ought to be continued in its present form with appropriation levels equal to the amounts necessary to fund entitlements fully. Many witnesses favored and presented evidence to support propositions which would, if adopted, expand the program.

The hearing record left the Commission in a quandary. There was little, if any, evidence to support reductions in the program and none to support discontinuation. The evidence offered by the Education Department was further weakened because--

(1) the policies of the States with respect to their methods for financing the operation of public schools are not under the mandate of this Commission and the Commission had, on April 22, adopted a policy finding that the Federal Government should be neutral with respect to the laws of the States and would not make recommendations on the basis of how the States should change their laws;

(2) the Commission had on April 22 adopted a policy finding that budgetary considerations are irrelevant to an assessment of the burden of Federal activities on the financing of local educational agencies;

(3) priorities among education programs cannot be assessed without a study of all education programs, which study is beyond the mandate given this Commission by the Congress; and

(4) the Department was made aware of these limitations prior to its second appearance before the Commission.

The Commission was left with the first two statements of the Department as relevant evidence. In support of those two statements no substantive evidence was offered--only a general statement of belief and assumptions.

The only other evidence found by the Commission which could be used as a policy reason for substantially reducing the Impact Aid Program was a section of a report entitled "Impact Aid Two Years Later: An Assessment of the Program as Modified by the 1974 Education Amendments."[90] On page 42 thereof begins a section entitled "Are Impact Aid Funds Equitably Distributed in Terms of District Needs and Federal Impact."

The Impact Aid Program is not a categorical program designed to assist in meeting specific educational needs of individual students, as is the case with almost all other Federal education programs, and, therefore, does not lend itself to evaluation on the basis of "need." The basic rationale for the program permits the use of only one criterion to determine need: the measurement of fiscal burden.

Since the source of and the interpretation of data used in that section of that report is unclear, pages 42-52 of that report are reproduced and included as Appendix M, without further analysis.

With this as the only evidence in favor of reduction of the Impact Aid Program, it became necessary to review circumstances which have changed since 1950. Federal immunity from State taxation was reviewed for refinements in the law in the last three decades--this being necessitated because the concept of Federal burden arises from that immunity; changes in school finance in the States were reviewed in order to determine the extent to which the patterns in school finance upon which Impact Aid was based remain; and the assumption that there are fiscal benefits to local educational agencies arising from Federal activities was studied.

D. INTERGOVERNMENT TAX IMMUNITIES: IMMUNITY FROM TAXATION VERSUS NECESSARY REVENUES UNDER A FEDERAL SYSTEM OF GOVERNMENT

Since the Impact Aid Program is designed to compensate local educational agencies, in part, for the burden caused by loss of tax revenues resulting from Federal immunity from State taxation, it is necessary to examine the nature of that immunity and where its limits lie.

Federal immunity from State taxation has its origins in the recognition that, under a federal system of government, the States ought not have the authority to tax the property of the Federal Government. The Articles of Confederation, adopted by the original thirteen States in 1777, expressly exempted property of the United States from State taxation. Section 1 of Article IV thereof was intended "better to secure and perpetuate mutual friendship and intercourse among the people of the different States." It set out the terms of the privileges and immunities of the citizens of the States and guaranteed the right to travel and freedom from inequitable restrictions on trade and commerce. The second proviso on that section stated that "no imposition, duties, or restrictions shall be laid by any State, on the property of the United States, or either of them."

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[90] Lawrence L. Brown, III, Alan L. Ginsburg & Martha Jacobs, Impact Aid Two Years Later, An Assessment of the Program as Modified by the 1974 Education Amendments 42-52 (1978).

This prohibition was not expressly carried over to the Constitution and the question of Federal immunity from State taxation was not squarely addressed in a holding of the Supreme Court until 1819, when the Court came down with an opinion in M'Culloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819), with Chief Justice John Marshall speaking for the Court. That case did not deal directly with whether a State could tax Federal property, but rather it dealt with State taxation of the operations of a Federal instrumentality--a national bank.

The Rule in M'Culloch. After determining that the authority to charter a national bank was within the implied power of the Congress, the Court addressed the question of whether the State of Maryland could, without violating the Constitution, tax the Baltimore branch of the national bank. Acknowledging that the power of taxation is one of vital importance, that it was retained by the States, and that it is concurrently exercised by the States and the United States, the Court found that the "paramount character" of the Constitution is such that it can withdraw any subject from taxation--noting that the Constitution expressly does so in that it prohibits the States from laying duties on imports or exports. M'Culloch, supra, at 432.

Reasoning that if the Constitution could restrain a State from exercising its taxing power on imports and exports, the Court stated that the same paramount character would seem to restrain a State from such other exercise of the power to tax as the nature of the tax is incompatible with, and repugnant to, the constitutional laws of the United States and that a law "absolutely repugnant to another, as entirely repeals that other as if express terms of repeal were used." Id. 433.

Under the principle that the Constitution "and the laws made in pursuance thereof are supreme," the laws of the United States control the constitutions and the laws of the States and the laws of the United States cannot be controlled by the States. From this principle can be deduced the following corollaries:

1) that the power to create implies the power to preserve;

2) that a power to destroy, if wielded by a different hand, is hostile to, and incompatible with, the powers to create and preserve; and

3) that where this repugnancy exists, the supreme authority must control. Id.

In response to the contention that the States may exercise their powers on a creation of the Congress, the Court considered the nature and extent of the right of taxation which, under the Constitution, remained with the States and admitted that the power of taxing the people and their property is essential to "the very existence of government," and may be exercised "to the utmost extent to which the government may choose to carry it," that the security against the abuse of that power lies in the structure of government, in that legislatures impose taxes on their constituents. Id. 434.

The United States has no such security with respect to a State legislature. The United States represents the people of all the States, not just those of the State imposing the tax in question, so that, when that tax is imposed, it acts upon a constituency broader than that represented by that State's legislature. The people of a single State may not confer upon the legislature of that State the power to tax the means which the United States employs in its Government. *Id*. 435.

Were this not the case, the States could tax all means employed by the Government which, since the power to tax involves the power to destroy and the power to destroy may defeat and render useless the power to create, could defeat all ends of the Government and, contrary to the intention of the people in designing the Government, make their Government dependent on the States. *Id*. 436. If the right of the States to tax the means employed by the Government "be conceded, the declaration that the Constitution and the laws made in pursuance thereof, shall be the supreme law of the land, is empty and unmeaning declaration." *Id*. 437.

On this line of reasoning, the Court held, as the unavoidable consequence of the supremacy declaration, that "the States have no power, by taxation or otherwise to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by the Congress to carry into execution the powers vested in the general government," and the Court declared that the Maryland tax, as a tax on the operations of the bank, was a tax on the operation of an instrument employed by the United States to carry its powers into execution and, therefore, unconstitutional. *Id*. 439.

In so holding, the Court noted that the opinion did not deprive the States of any resources which they originally possessed. It did not extend to a tax paid by the real property of the bank, in common with other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in the bank, in common with other property of the same description throughout the State. *Id*.

Extension of the M'Culloch Rule. By 1829, the Supreme Court had found that obligations of the United States were protected from State taxations.[91] This doctrine was later extended until all property owned by the United States was immune from State taxation.[92]

Even though *M'Culloch* did not hold that State immunity from Federal taxation was a corollary with Federal immunity, reciprocity was extended.[93] Reasoning that self-preservation of a government requires that its activities be exempt from taxation by another government, the Court concluded that State sovereignty requires that State activities be immune from Federal taxation. However, States' immunity has been limited to their governmental activities; it does not immunize proprietary activities of the States from Federal taxation if those activities are otherwise subject to taxation or regulation by the Congress.[94]

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[91] *Weston v. Charleston*, 27 U.S. (2 Pet.) 449 (1829).

[92] *Clallam Co. v. United States*, 263 U.S. 341 (1923).

[93] *Collector v. Day*, 78 U.S. (11 Wall.) 113 (1871).

On the other hand, the Federal immunity does extend to proprietary activities of the Federal Government. See United States v. Tax Commission of Mississippi, 412 U.S. 363 (1973); 421 U.S. 599 (1975).

After the decision in Weston v. Charleston, the Court applied the principle of Federal immunity from State taxation to all Federal property, salaries of Federal officers, and agents of the United States (including contractors).[95] In the case of contractors, no tax could be laid on their franchises or operations, but their local property could be taxed if the State tax did not discriminate against the contractor, as an agent of the United States.[96] The Court appears to have set aside any State tax on contractors which burdened the Federal Government or which could impede the operations of the Government. This precluded taxation of legal tender notes of the United States, income from Federal securities, income from tax-exempt bonds, and gross receipts on Government contractors.[97]

This expansion of Federal immunity, together with an increase in Federal activity, had the effect of depriving the States of necessary revenues. In two cases, the Supreme Court began to place limits on Federal immunity from State taxation which appeared to reverse the earlier trend: James v. Dravo Contracting Co., 302 U.S. 135 (1937), which permitted West Virginia to apply a non-discriminatory tax on the gross receipts of a contractor under a Government contract, and Graves v. New York ex rel. O'Keefe, 306 U.S. 466 (1939), which held that a State could tax the income of an employee of a Federal agency. In both cases the Court indicated that Federal immunity could unduly restrict the taxing power of the States. In Graves, supra, at 492, the opinion stated that permitting immunity in that case "would impose to an inadmissible extent a restriction on the taxing power which the Constitution has reserved to the [S]tate governments." In James, supra, at 150, the Court stated that the application of the principle of Federal immunity "has required

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94/ New York v. United States, 326 U.S. 572 (1946); South Carolina v. United States, 199 U.S. 437 (1905).

95/ McGoon v. Scales, 76 U.S. (9 Wall.) 23 (1869); Dobbins v. Commissioners, 41 U.S. (16 Pet.) 435 (1842); Clallam Co. v. United States, 263 U.S. 341 (1923); New Brunswick v. United States, 276 U.S. 547 (1928); Smith v. Kansas City Title Co., 255 U.S. 180, 212 (1921).

96/ Owensboro National Bank v. Owensboro, 173 U.S. 664 (1899); Indian Territory Oil Co. v. Board, 288 U.S. 325 (1933).

97/ Bank v. Supervisors, 74 U.S. (7 Wall.) 26 (1869); Northwestern Mutual L. Ins. Co. v. Wisconsin, 275 U.S. 136 (1927); Miller v. Milwaukee, 272 U.S. 713 (1927); Federal Land Bank v. Crosland, 261 U.S. 374 (1923); Telegraph Co. v. Texas, 105 U.S. (15 Otto.) 406 (1881).

the observing of close distinctions in order to maintain the essential freedom of government in performing its functions, without unduly limiting the taxing power which is equally essential to both Nation and State under our dual system."

In 1958, the Supreme Court permitted local governments in Michigan to tax private businesses on Federal property.[98] Most recently, the Court upheld a tax on the possessory interests of employees of the Federal Government in housing on Federal property, supplied by the Federal Government.[99]

On the basis of these cases the doctrine of Federal immunity from State taxation would appear to permit State taxation of private interests in Federal property so long as the tax does not fall upon the Federal Government itself, the tax does not unduly burden the Federal Government or impede its functions, and the tax is non-discriminatory.

Exclusive Jurisdiction of the United States. The "clear distinctions" observed by the Court in these cases do not apply with respect to territory which lies within the exclusive jurisdiction of the United States, where the laws of the States have no force. Clause 17 of section 8 of Article I of the Constitution provides that Congress shall have the power to "exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

It would seem to have been the opinion of the framers of the Constitution that, without the consent of the States, the Federal Government could not acquire land within them and that such consent should carry with it political dominion and legislative authority over the land in question. Purchase with such consent was the only mode then thought for the acquisition of lands within the States. After the adoption of the Constitution, that view did not prevail; and State consent has not always been obtained upon Federal acquisition of property. Where land is acquired without consent, the possession of the United States is simply that of an ordinary proprietor, and property so acquired, unless used as a means to carry out the purposes of the Federal Government, is subject to the legislative authority (other than that of taxation) of the States equally with the property of private individuals.[100]

The States have both general and specific statutes consenting to Federal jurisdiction over lands acquired within them, which range from a consent to Federal jurisdiction over all property acquired within the State to consent to such jurisdiction so long as the property is used for the purpose acquired, to reserved concurrent jurisdiction, and to specific consent with respect to specific acquisitions.

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[98] United States v. Detroit, 355 U.S. 466 (1958); United States v. City of Muskegon, 355 U.S. 484, 488 (1958); City of Detroit v. Murray Corporation, 355 U.S. 489 (1958) [hereinafter cited as The Michigan Cases].

[99] United States v. County of Fresno, 429 U.S. 452 (1977).

[100] Fort Leavenworth Railroad Co. v. Lowe, 114 U.S. 525, 530 (1885).

Must the Federal Government accept jurisdiction when the States consent? Early Supreme Court decisions presumed acceptance when consent was offered, unless there was evidence of a Federal dissent to the State action. This presumption was based on the assumption that the passage of jurisdiction from the State to the Federal Government conferred a benefit on the Federal Government.[101] As early as 1841, the Congress was legislating rules concerning acquisition of land and jurisdiction over land acquired. Acquisition authority was expressly limited without State consent.[102] However, in 1937, the Court held that the Federal Government is not compelled to accept political jurisdiction when consent is offered, contrary to its own conception of its interests.[103] In addition, the Federal Government has the right to acquire property, without the consent of the States, by the exercise of the power of eminent domain.[104]

In 1940, section 355 of the Revised Statutes (containing the statutory authority for 40 U.S.C. 255) was amended by deleting the requirement that State consent be had for the acquisition of land by the Federal Government and by adding a new paragraph providing that unless there was explicit acceptance by the Federal Government, "it shall be conclusively presumed that no such jurisdiction has been accepted."[105] This section was intended to give broad discretion to the various agencies in order that they might obtain only the necessary jurisdiction.[106]

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[101] *Id.* 528.

[102] 5 Stat. 468, now classified to 40 U.S.C. 255 (1976).

[103] *Silas Mason Co. v. Tax Commission of Washington*, 302 U.S. 186, 207 (1937).

[104] *James v. Dravo Contracting Co.*, 302 U.S. 134, 141 (1937); *Fort Leavenworth Railroad Co. v. Lowe*, 114 U.S. 525, 531 (1884).

[105] Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted. (40 U.S.C. 255 (1976).)

When the Federal Government has acquired exclusive jurisdiction over territory, it has all of the powers of the national and a State government.[107] Private personal property located within such a jurisdiction[108] cannot be taxed by the State in which such jurisdiction is located.[109] Exclusive jurisdiction bars State laws on liability for negligence,[110] and State criminal laws.

Responsibility for governance in territories over which the United States has accepted exclusive jurisdiction passes with such acceptance. With respect to education, the Federal Government has accepted its responsibility for governance in some cases of exclusive jurisdiction by establishing and operating schools for children residing within that jurisdiction.[111] In these cases, removal from State taxation has been accompanied by an assumption of Federal responsibility for governance. Were all cases where the Federal Government exempts property from State taxation also cases in which the Federal Government assumes jurisdiction and responsibility, the conflict between tax immunity and the need for revenues for governance would not exist. That has not been the case. The United States has extended tax immunity without accepting jurisdiction, so that the responsibility for governance has been severed from the ability to raise the revenues necessary therefor.

Federal Jurisdiction Other Than Exclusive. The States may qualify their consent to Federal acquisition of property, and the Federal Government may not accept the offer of State consent.[112] When State consent is inconsistent with exclusive jurisdiction, concurrent jurisdiction results.[113] When there is no State consent, no jurisdiction passes to the United States and the United States holds the property in much the same manner as a private proprietor, except that the property owned by the United States is not subject to State taxation.[114] The Congress has created Federal instrumentalities and permitted limited State taxation.[115] In such cases, the operations of those instrumentalities are tax-exempt, while the property of the instrumentality may be subject to State taxation, dependent upon the terms of the Federal statute.[116]

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[106] *Adams v. United States*, 319 U.S. 312 (1943).

[107] *Pacific Coast Dairy, Inc. v. Dept. of Agriculture*, 318 U.S. 285 (1943).

[108] *Surplus Trading Co. v. Cook, Sheriff*, 281 U.S. 647, 649 (1930).

[109] *Arlington Hotel Co. v. Fant*, 278 U.S. 439, 449 (1929).

[110] *Benson v. United States*, 146 U.S. 325, 331 (1892).

[111] *See* Act of September 30, 1950, Pub. L. No. 874, 81st Cong., 2d Sess., §6, 20 U.S.C.A. §241 (1974 & Supp. 1978) (original version at ch. 1124, 64 Stat. 1107 (1950)).

[112] *James v. Dravo Contracting Co.*, 302 U.S. 134 (1937); *Silas Mason Co. v. Tax Commission of Washington*, 302 U.S. 186 (1937).

[113] 77 Am. Jur. 2d *United States* §84 (1975).

[114] 71 Am. Jur. 2d *State and Local Taxation* §§221-234 (1973).

[115] 71 Am. Jur. 2d *State and Local Taxation* §§240-243 (1973).

State consent to Federal jurisdiction varies. Some consent to jurisdiction, reserving only the right to service of process for crimes committed outside Federal jurisdiction, while others have reserved the right to tax specific items, such as railroads and bridges.[117] Some States have standing statutes consenting to Federal jurisdiction wherever or whenever the United States acquires property within their territorial boundaries; and others give specific consent with respect to specific acquisitions.[118]

This has resulted in a patchwork pattern of exclusively Federal, concurrently State and Federal, and wholely State political jurisdiction over Federal property, so that the authority of the State to tax activities on Federal property must be determined on a case-by-case basis. This determination must take into consideration the means by which the property was acquired, the terms of State consent, if any, and whether there has been an acceptance by the United States.

An unanswered question is to what extent does political obligation with respect to the residents on Federal property pass with political jurisdiction when it is less than exclusive? Do residents in such instances have the rights as citizens of the States wherein they reside when jurisdiction has passed to the United States? With respect to Indian lands, residents have their full rights as citizens of the States because Federal law creates those rights, even though the jurisdiction over those lands is almost exclusively Federal. Yet, this does not appear to be the rule in other cases.

Indian Lands. Different from territory under exclusive jurisdiction under clause 17 of section 8 of Article I of the Constitution and from property exempt from State taxation under the Supremacy Clause is the case of real property held in trust by the United States for individual Indians or Indian tribes or real property held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States. The immunity of these lands and of Indians on reservation lands appears to stem from their having been distinct political communities, with territorial boundaries, within which the authority of the Indians is exclusive, which authority is guaranteed by the United States. The United States' authority to make and enforce that guarantee is derived from the treatymaking power of the President under clause 2 of section 2 of Article II of the Constitution, from the power of the Congress to regulate commerce with the Indian tribes and, in some cases, from the Supremacy Clause, to the extent that Indian reservations are instrumentalities of the United States.[119]

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[116] *Id.*
M'Culloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819).

[117] *Fort Leavenworth Railroad Co. v. Lowe*, 114 U.S. 525, 530 (1884).

[118] *Id.*

The commerce and treatymaking authorities, with respect to Indian tribes, vested in the Federal Government by the Constitution imply a sovereignty, on the part of those tribes, equivalent to that of foreign nations, and, as such, the States may not interfere with rights created by treaties between the United States and those tribes, and so may not tax the members of those tribes.[120] So long as there is a tribal organization recognized by the Federal Government, the Indians are a people distinct from others, capable of making treaties, separated from the jurisdiction of the States, governed exclusively by the Federal Government. The Federal Government has had a policy of permitting the Indians to govern themselves without State interference.[121]

Even though the Indian sovereignty doctrine has been eroded considerably, it was in force for the period of time when treaties were made and many statutes affecting the rights of Indians were enacted. *Id*. 172. It is in the terms of those treaties and statutes that the present Indian immunity from State taxation is described or implied.

There is no uniformity among the treaties of Indian tribes regarding their immunity from State taxation; nor is there uniformity in the statutes admitting the States regarding the status of Indian tribes within the territorial limits of the States. However, the treaties, in general, obligate the United States to the protection of the rights of Indians, including their tribal existence, and retain sole jurisdiction in the United States for governmental dealings with the Indians so long as the tribes exist. The organic acts of the States recognize this jurisdiction, so that the States do not have the jurisdiction to tax Indian lands. Indian immunity from State taxation goes beyond the lands and includes immunity from sales and income taxes on Indians on Indian lands.[122]

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[119] *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); *United States v. Kagama*, 118 U.S. 375 (1886); *United States v. Rickert*, 188 U.S. 432 (1903).

The Court reached the treatymaking power authority by interpreting section 2 of Article III of the Constitution which provides that the judicial power shall extend to all cases, in law and equity arising under "treaties made, or which shall be made, under" the authority of the Constitution or the laws of the United States. Since treaties had, prior to the adoption of the Constitution, been made with Indian tribes, this has been construed as authorizing the President to make treaties with Indian tribes thereafter. *Worcester*, *supra*, at 558; *Holden v. Joy*, 84 U.S. (17 Wall.) 211 (1872).

[120] *The Kansas Indians*, 72 U.S. (5 Wall.) 737 (1866); *The New York Indians*, 72 U.S. (5 Wall.) 761 (1866); *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973).

[121] *The Kansas Indians*, *supra* note 120, at 755; *McClanahan*, *supra* note 120, at 170.

The absence of State political jurisdiction with respect to Indian tribes, together with the Federal law-making members of those tribes' citizens of the States, creates a situation in which the States have political obligations to citizens over whom they have limited political jurisdiction. These citizens are guaranteed equal protection of the laws of the States (including their laws providing for free public education), yet they have guarantees with respect to education under the treaties between the United States and Indian tribes.

Summary of Immunities. No general rule on Federal immunities from State and local taxation can be stated. Immunity is determined by political jurisdiction over the property in question. Setting aside the question of jurisdiction, the States may not tax Federal property or its instrumentalities, States may not tax agents (or contractors) of the United States if the tax creates an undue burden on the Federal Government or impedes its operations, nor may the States tax in such a manner that discriminates against those agents or employees. Beyond these limits, the immunity of the United States, under the Supremacy Clause doctrine, is yet to be defined. The present test for determining whether the Federal Government may be taxed by a State appears to be defined by the "rule of legal incidence": State taxation that falls directly upon (is legally incident upon) Federal instrumentalities is forbidden. Taxes that economically burden government operations but whose legal incidence is on those selling goods and services to the government are generally permitted, provided they do not discriminate against or severely burden the Federal Government.[123] A tax upon a Federal contractor may be valid or a tax upon the possessory interest of employees of the Federal Government residing in housing on Federal property may be valid.[124]

This discussion of Federal immunity under the Supremacy Clause of the Constitution is not intended to be comprehensive. It has not included the entire scope of tax exemption by reason of Federal statutes. Federal statutory law has permitted some forms of taxation with respect to federally-chartered institutions--such as national banks--and has prohibited local taxation of non-Federal instrumentalities such as federally-subsidized local housing authorities, which are discussed elsewhere in this report.[125]

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[122] McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973); Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973).

[123] Boeing Aircraft Co. v. Reconstruction Finance Corp., 171 P.2d 838 (1946).

[124] United States v. County of Fresno, 429 U.S. 452 (1977).

[125] See R.D. Ebel & J.E. Towles, Advisory Commission on Intergovernmental Relations, Federal Payments In-Lieu of Local Property Tax Payments (1980) for a more nearly complete discussion of Federal immunity and its effects.

Since Federal immunity is only the beginning point of a study of Impact Aid and not entirely within the scope of that study, this limited review of some of the major features of immunity is sufficient to lay the groundwork for a consideration of some of the implications of that doctrine.

Limitations on Immunity. As early as the opinion by Marshall in *M'Culloch*, concerns were expressed that Federal immunity from State taxation may give to the Federal Government an inordinant power against the States.[126] Marshall set aside that argument stating that the Court was simply declaring "a tax on the operations" of the bank unconstitutional and adding that the decision --

> does not deprive the States of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State. *Id*. 439.

M'Culloch did not address the question of Federal acquisition of real property and, by such acquisition, the exemption of such property from State taxation. The authority to lay a tax on real property is, except in the case of an apportioned direct Federal tax, within the jurisdiction of the States. When real property is exempted from taxation by Federal activities or operation of Federal law, the States are deprived of "resources which they originally possessed."[127]

There is evidence that these concerns were a factor when the Court reversed the trend in favor of immunity in its decisions in *James v. Dravo Contracting Co.*, *op. cite*, and *Graves v. New York ex rel. O'Keefe*, *op. cite*, in the late 1930's and the Michigan cases in 1958.[128]

126/ *M'Culloch*, *supra*, at 439.

127/ Federal statutes, including the Acts of Congress admitting the States to the Union, provide that Federal property within the States is to be exempt from taxation. *See* note 62, *supra*. In addition, many State constitutions and laws provide that the Federal property will be exempt from taxation. It has been reasoned that such provisions are merely declaratory of what the law is, regardless of the provisions, and they are unnecessary to establish the exemption of Federal property from State taxation. [*Boeing Aircraft Co. v. Reconstruction Finance Corp*., 171 P.2d 838 (1946).] Federal property is not simply exempt from taxation, which may imply a grant of exemption by the State; it is immune from taxation by reason of the Constitution and the federal system.

128/ *The Michigan Cases*, *supra* note 98.

Thus far the Supreme Court has treated this concern as one for the Congress, and not the courts.[129] However, a recent decision of the Court may shed light on some new thinking regarding relations between the States and the Federal Government.

With *National League of Cities v. Usery*, 426 U.S. 833 (1976), the Court invalidated the 1974 amendments to the Fair Labor Standards Act which required States to pay their employees minimum wage and overtime pay. The Act had, since enactment in 1938, applied the same requirements to private employers. The Supreme Court had, in 1941, unanimously upheld the Act as a valid exercise of the Congress' power under the Commerce Clause in *United States v. Darby*, 312 U.S. 100 (1941). In 1966, the Congress amended the definition of employer under the Act to include the U.S. Government, States, and their political subdivisions with respect to employees of State hospitals, institutions and schools. The Court upheld those amendments in *Maryland v. Wirtz*, 392 U.S. 183 (1968). There the Court reasoned the amendments were a valid exercise of congressional authority, and to the extent that the Congress, in the exercise of its valid authority, interferes with the State carrying out its functions, the State interests must yield. The 1966 amendment had exempted from the Act's coverage any employee in an executive, administrative or professional capacity, including academic administrative personnel or teachers in elementary or secondary schools; it covered only employees of hospitals, schools, and institutions.

The 1974 amendments removed altogether the exemption of States and their political subdivisions from being considered employers under the Act. The amendments meant all State and municipal employees were to be paid minimum wage and overtime pay. *National League of Cities* reversed *Wirtz*. The Court held that such requirements, though a valid exercise of the commerce power when applied to private employers, when applied to States interfered with the States' ability to make fundamental employment decisions in carrying out traditional governmental functions. "This congressionally imposed displacement of State decisions may substantially restructure traditional ways in which the local governments have arranged their affairs."[130] The Court reasoned the congressional enactments--which may be fully within the grant of legislative authority--may nonetheless be invalid if they offend other provisions of the Constitution such as the Sixth Amendment or the Due Process Clause of the Fifth Amendment.[131]

If the Fifth and Sixth Amendments can limit the power of the Congress under the Commerce Clause, can the Tenth Amendment also serve as a limitation on the Commerce Clause? The Tenth Amendment declares a

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129/ *Federal Land Bank v. Bismarck Co.*, 314 U.S. 95 (1941); *Board of Commissioners v. Seber*, 318 U.S. 705 (1943).

130/ *National League of Cities v. Usery*, 426 U.S. 833, 849 (1976).

131/ *See United States v. Jackson*, 390 U.S. 570 (1968); *Leary v. United States*, 395 U.S. 6 (1969).

constitutional policy that the Congress may not exercise power in a fashion that impairs the integrity of the States or their ability to function effectively in a federal system.[132] Citing *New York v. United States*, as a limitation on Federal authority to tax the States, *Lane v. Oregon*, respecting the constitutionally recognized necessary existence of the States and their independent authority, and *Metcalfe and Eddy v. Mitchell*, 269 U.S. 514 (1926), the Court concluded that the commerce power, which authorizes the Congress to regulate private business, does not in the same manner permit the exercise of that power directed to the States as States.[133]

There are attributes of sovereignty attaching to every State government which may not be impaired by the Congress, not because the Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that matter.[134]

After examining the evidence concerning the financial impact of the Fair Labor Standards Act on State and local governments and the reduction in State and local services as a consequence thereof, the Court noted that the Act displaced State policies regarding the manner in which they could structure the delivery of those governmental services which their citizens require, with the only discretion left to the States being either to attempt to increase their revenues or to reduce the number of employees.[135] The displacement of State decisions could substantially restructure traditional ways in which local governments have arranged their affairs.[136] This is an impermissible interference with the integral governmental functions of the States and their subdivisions, in that, if the Congress is permitted to withdraw the authority from the States to make fundamental decisions regarding employment and the performance of their functions, there would be little left of the States' separate and independent existence and there would be an impairment of the States' ability to function effectively in a federal system.[137]

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[132] *Fry v. United States*, 421 U.S. 542, 547 n.7 (1975).

[133] *National League of Cities v. Usery*, 426 U.S. 833, 843 (1976).

[134] *Id.* at 845.

[135] *Id.* at 846.

[136] *Id.* at 849.

[137] *Id.* at 851. Much of the evidence regarding the effect of complying with the Fair Labor Standards Act dealt with the costs to State and local governments incurred by reason of compliance and the effect of those costs on State and local governmental functions. It is worth speculating whether the result would have been the same had the Federal Government assisted those governments in covering those costs. Were that the case, the analogy with Impact Aid could be extended.

On this line of reasoning the Court held that this exercise of congressional authority "does not comport with the federal system of government" and that insofar as the challenged statute operates to displace directly the States' freedom to structure integral operations in areas of traditional governmental functions, it is not within the commerce power of the Congress.[138/]

The Court distinguished this holding from that in Fry v. United States, supra, in which Federal regulation of salaries of State employees under the Economic Stabilization Act of 1970 was upheld by noting that Federal interference thereunder was less than that under the Fair Labor Standards Act since the interference was only a temporary wage freeze imposed as an emergency.[139/]

With respect to Maryland v. Wirtz, supra, the Court, stating that the "Congress may not exercise that power [to regulate Commerce] so as to force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made," agreed with the dissent of Mr. Justice Douglas in Wirtz in which he warned that the assertion of the power of the Congress, if unchecked, would allow the Federal Government to "devour the essentials of [S]tate sovereignty" and overruled Wirtz.[140/].

This case is one of the few instances in which the Court has placed a check upon the commerce power of the Congress. The full implications of this decision are not yet apparent. The Court has not applied a similar check on the Supremacy Clause. The question arises whether the burden placed on States and their political subdivisions (local educational agencies) by the Federal Government under the Supremacy Clause sufficiently interferes with the ability of governmental units to carry out integral governmental functions, namely providing public education, to merit a check upon that authority.

Whether the restriction placed upon the exercise of the Federal commerce power in National League of Cities can be applied to Federal immunity from taxation of the State is an open question. In National League of Cities, the Court dealt with Federal regulation of State activity, not with immunity from State taxation.[141/] In his disssenting opinion, Mr. Justice Brennan disputed the reliance of the opinion of the Court on the State sovereignty doctrine, drawing a distinction between Federal regulation and Federal taxation of State functions and stating that "[t]hat reliance is plainly misplaced."[142/]

[138/] Id. at 852.
[139/] Id. at 853.
[140/] Id. at 855.
[141/] Id. at 843, n. 14.
[142/] Id. at 863.

In response, Mr. Justice Rehnquist, in a footnote to his opinion for the Court, stated that the "asserted distinction, however, escapes us. Surely the [F]ederal power to tax is no less a delegated power than is the commerce power.... Nor can characterizing the limitation recognized upon Federal taxing power as an 'implied immunity' obscure the fact that this 'immunity' is derived from the sovereignty of the States and the concomitant barriers which such sovereignty presents to otherwise plenary [F]ederal authority."[143]

This note indicates a willingness, on the part of at least some of the justices, to generalize State sovereignty limitations on the power of the Congress under Article I. Further, it raises the question addressed by this report: does the same sovereignty which demands intergovernmental tax immunities in a federal system carry with it a limit on the extent to which those immunities can be carried? Clearly, with respect to State immunity, there are limitations. See New York v. United States, supra, and United States v. California, 297 U.S. 175 (1936).

National League of Cities only dealt with the Congress' exercise of its power under the Commerce Clause, and more specifically, only with one act or exercise of that power--the Fair Labor Standards Act. The Court has not carried the reasoning of this case to any other exercise of congressional authority. The Court has followed National League of Cities in two other cases dealing with the same Act and application thereof.[144] The Court has specifically refused to apply the National League of Cities holding to limit the power of the Congress under the Fourteenth Amendment.[145] It has also held the case does not apply when the Federal Government requires a State to pay attorneys' fees on behalf of indigents or provide prison libraries as part of prisoners' access to Federal courts.[146] The case has been followed by some courts of appeal in holding the Fair Labor Standards Act did not apply to wages paid to prisoners in a State and the Federal courts could not interfere with integral decisions of the State legislature.[147]

Applying the National League of Cities to the concept of exemption of Federal real property from State taxation requires that exemption be equated with taxation or regulation. Exemption from State taxation is

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143/ Id. at 843, n.14.

144/ Indiana v. Usery, 427 U.S. 909 (1976) (No. 75-404), cert. granted, judgment vacated, and case remanded for further consideration in light of National League of Cities (426 U.S. 833 (1976)) Brennan v. State of Indiana, 517 F.2d 1179 (7th Cir. 1975).
New Jersey v. Usery, 427 U.S. 909 (1976) (No. 75-532), cert. granted, judgment vacated, and case remanded for further consideration in light of National League of Cities (426 U.S. 833 (1976)) Dunlop v. State of New Jersey, 522 F.2d 504 (3rd Cir. 1975).

145/ Monell v. N.Y. City Dept. of Social Services, 436 U.S. 658 (1978).

146/ Bounds Correction Commissioner, et al. v. Smith, et al., 430 U.S. 817 (1977).

147/ Wentworth v. Solem, 548 F.2d 773 (1977); David v. Akers, 549 F.2d 120 (1977).

the result of the necessity that Federal operations be free from the burdens of State taxation. In order to apply the *National League of Cities* doctrine, it would be necessary for the Court to reason that Federal acquisition of real property so burdens a State in carrying out its functions that the Federal Government's exercise of its power to exempt from taxation violated the Tenth Amendment. It is important to note that the Federal Government acquires property for various reasons as an exercise of a number of powers--as an exercise of its war power, its foreign commerce power, and its taxing power. So it would require a balance between the exercise of the particular Federal power and the taxing authority reserved to the States. Some Federal powers are clearly paramount to the States' exercise of its functions, for example the national defense power.

In his concurring opinion, in *National League of Cities*, Mr. Justice Blackman stated that his concurrence was with the understanding that the Court's opinion adopts a balancing approach between the interests of the Federal Government and those of the States.[148]

Moreover, the four dissenters were of the opinion that the balancing of those interests ought properly to take place in the "political branches" of the Government where the States "are fully able to protect their own interests."[149] Indeed, with respect to tax immunities, the Court has stated that it is a matter for the Congress, not the courts.[150]

Before such a question would reach the courts, other forces within the Federal Government would more likely come into play to mitigate the effect of Federal burdens on communities. Impact Aid is, of course, the result of some of these forces. While it is unlikely that court fiat would require a program like Impact Aid, the Congress has the power to enact a program to compensate local educational agencies for losses in tax revenues resulting from Federal tax immunity.

Supreme Court decisions do not dictate a program like Impact Aid. If regulations, taxation, and exemption are essentially the same--inasmuch as each costs localities money--it is possible to analogize from them to conclude that the Impact Aid Program is warranted on legal, as well as many equitable and political, grounds.

E. SCHOOL FINANCE AND IMPACT AID

Research into school finance issues for the purpose of studying the Impact Aid Program has revealed the following generalizations:

(1) Revenues for education from Federal and State sources have increased.

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[148] *National League of Cities*, 426 U.S. at 856.

[149] *Id.* at 876.

[150] *Board of Commissioners v. Seber*, 318 U.S. 705, 718 (1943).

(2) Reliance on local taxation of real property for education revenues has decreased to some extent; however, property taxes still comprise the major part of local education revenues.

(3) Neither of these trends is so substantial as to require a departure from the traditional approach of Impact Aid.

School Finance in 1950. The local share of education revenues was 57.3 percent in 1950; the State share was 39.8 percent; the Federal share, 2.9 percent.[151] Property tax revenues provided approximately 98 percent of local education revenues and 60 percent of total education revenues.[152] School finance reform movements of the 1920's and 1930's had caused an increase in the State share of education revenues; State aid was given primarily through Minimum Foundation Programs.

The American economy of 1950 had been stimulated by World War II. School district consolidation had been proceeding and enrollments were declining since the 1930's. Only after 1950 did enrollment return to the size it was in 1930. Beginning in the mid-1950's, several social and demographic factors pushed for school finance reform: increased enrollment, migration from rural to urban and suburban areas, decreasing usefulness of the property tax base as a measure of ability to pay taxes, the movement for equality in educational opportunity, inflation, and competition for scarce local resources resulting from public demand for social services other than education.[153]

School Finance Today. The proportion of school revenues supplied by the States remained relatively constant from 1950 until 1973, when the State share grew from approximately 39 percent of total revenues to nearly 41 percent. The State share has increased each year since 1973; it is projected that 48.1 percent of total school revenues will come from the State in 1979-80. The local share hovered around 57 percent of total education revenues between 1950 and 1956, when it began a slow, steady descent expected to reach 42.5 percent of total revenues in 1979-80. The Federal share of education revenues has more than tripled since 1950 and is expected to reach 9.3 percent in 1979-80.[154]

Impact Aid is based on the assumption that Federal ownership of land is a local burden. Thus the measure of Impact Aid per child is the local contribution per child. There is evidence that States are paying an increasingly larger share of the cost of education. To the extent that

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151/ National Center for Education Statistics, Digest of Education Statistics 1979, at 71 (1979).

152/ E. McLoone, Effects of Tax Elasticities on the Support of Education (1961) (unpublished Doctoral thesis in University of Illinois Library).

153/ National Center for Education Statistics, The Condition of Education 144 (1976).

154/ National Education Association, Estimates of School Statistics 1979-80 (1980).

States finance education, Federal ownership of land is not a local burden warranting payments to local educational agencies. Localities continue to pay, on the average, a substantial portion of the cost of education. Tax-exempt Federal property, therefore, continues to be a burden in that the local share of education is derived substantially from local property taxes.

Although property tax revenues have become less important in financing public education from all levels of government since 1950, decreasing from approximately 60 percent to 43.1 percent in 1977, local educational agencies continue to rely heavily on them for local revenues. Local education revenues from property taxes decreased only from approximately 98 percent in 1950 to 90.2 percent in 1966-77.[155] In addition, the majority of those property tax revenues continue to come, as they did in 1950, from taxes on residential and commercial property. Recent data on education revenues from the property tax nationwide by source has indicated that 49 percent comes from residential property and 36 percent comes from commercial and industrial property with the balance coming from public utilities (nine percent) and farm properties (six percent).[156]

Differences in the amount of Impact Aid payments on the basis of "A" versus "B" students have been based traditionally on the notion that residential and commercial property each provide half of education revenues. While the percentage of property tax revenues coming from residential property ranges from 26.6 percent in North Dakota to 62.2 percent in Hawaii, half of the States are within 6.5 percentage points of the average percentage, which is 46.7 percent.[157] In 34 of the States the percentage of property tax revenues from residential sources is within ten percentage points of 50 percent.

In 31 States and the District of Columbia, residential property taxes comprise less than 50 percent of total tax revenues. This means that districts in those States, on the average, lose less than half their tax revenues because of children living on Federal property with parents working in the private sector (live-on "B's"). Thus in the case of "live-on 'B's,'" the 50/50 assumption results in an overcompensation to districts. Similarly, there is undercompensation with regard to "work-on 'B's.'"

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[155] National Center for Education Statistics, Revenues and Expenditures for Public Elementary and Secondary Education 1976-77, at 13 (1970).

[156] Id.
D.K. Halstead & H.K. Weldon, National Institute of Education, DHEW, Tax Wealth in Fifty States, 1977 Supplement 164-171 (1979).
Bureau of the Census, U.S. Department of Commerce, Taxable Property Values and Assessment/Sales Price Ratio/1977 Census of Government 41 (1978).

[157] D.K. Halstead & H.K. Weldon, National Institute of Education, DHEW, Tax Wealth in Fifty States, 1977 Supplement 162-171 (1979).

In 19 States, residential property taxes comprise more than 50 percent of total tax revenues. In these States, the 50/50 assumption means that local educational agencies are undercompensated for the tax loss attributable to "live-on 'B's'" and overcompensated for the tax loss attributable to "work-on 'B's.'"

Any over- or undercompensation for one or the other of residential or commercial property tax loss is cancelled when districts receive compensation on the basis of "A" students and receive all of the local cost of educating those students.[158]

In 1950, the State contribution to public school funding in most States was minor; localitites paid nearly 60 percent of the cost. Based on that, the 1950 statute creating Impact Aid computed the amount of Impact Aid a local educational agency should receive for its school districts using an amount it was assumed the locality would have contributed to educate a federally-connected child. That provision of the statute has not changed since 1950. Some have pointed out that the State contribution to public school funding has increased since 1950 and that policy under Impact Aid of compensating local educational agencies using an amount based on local contribution should be reconsidered in light of that increase. Analysis of trends in Federal, State, and local shares of the cost of public education has addressed the significance of those changes for Impact Aid and points to the conclusion that the change in the State share of public education revenues has not increased a significant enough degree since 1950 to warrant a fundamental change in the approach of Impact Aid to compensation. That conclusion does not mean, however, that "local contribution rate," the technical measure of compensation as set out in Public Law 874, does not require reevaluation in light of the financing trends discussed in this section.

F. IMPACT AID UNDER THE FEDERAL SYSTEM

Not only does the Federal Government deprive local educational agencies of revenue when it exempts property from taxation, but it imposes a cost on schools when children living on Federal land or living with parents working on Federal land must be educated in the local schools.

Except in cases where real property is within the exclusive jurisdiction of the United States, children residing on Federal property or with parents employed on Federal property are usually citizens of the State where they reside. They have, under the Constitution, the same rights as all other citizens similarly situated. Their mere presence brings with it obligations on the States and their local educational agencies, without regard for the reason for their presence. Among their rights is that to a free public education.

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[158] This is true to the extent that 100 percent of education revenues comes from property taxes.

The Fourteenth Amendment to the Constitution provides: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall...deny to any person within its jurisdiction the equal protection of the laws." Were a State to refuse to educate federally-connected children in a manner similar to that in which non-federally-connected children are educated, that action would most likely be considered unlawful discrimination under the Fourteenth Amendment.

If a court scrutinizing the refusal of a State to educate federally-connected children decided that a federally-connected child's interest in receiving an education similar to that received by nonfederally-connected children is a fundamental interest, the State would have to show that refusing to educate federally-connected children is necessary to satisfy a compelling State interest. If a court decided, on the other hand, that federally-connected children do not have a fundamental interest in receiving a public education similar to that received by nonfederally-connected children, the State would still have to show it had a rational basis for refusing to educate federally-connected children. It is unlikely a State could meet either test.

The States have devised laws both for the education of children at public expense and for raising the revenues necessary to provide that education. Presumably those laws are designed to work together so that the revenues raised are adequate to support the operation of schools to provide that education. If the tax-exempt status of Federal property prevents localities and States from raising the revenues necessary to provide a free public education for federally-connected children, it impairs the operations of those laws. It thereby burdens taxpayers by requiring that more revenues be raised from a tax base diminished by the Federal Government's presence. It follows that the Federal Government has a responsibility for mitigating the effects of its presence.

G. MITIGATING THE ADVERSE EFFECTS OF FEDERAL ACTIVITIES ON LOCAL EDUCATIONAL AGENCIES

Federal immunity from State and local taxation, combined with the cost of providing education for federally-connected children, places a financial burden on local educational agencies which varies with the amount of property exempted from taxation and the number of federally-connected children. If the children served by a local educational agency adversely affected by Federal activities are to receive an adequate level of education, the cost of that adverse effect--the Federal burden--must be borne by somebody, at some level of government.

How might the Federal Government mitigate the effects of its presence by compensating localities or States for the burdens its presence imposes? The authors of Public Law 874 intended that, to the extent possible, the

Federal Government was to be treated as a private owner of real property.[159]

It is argued that the Federal Government already mitigates the adverse economic effects of its presence in localities because economic benefits are conferred when the Federal Government injects money into the local economy, increasing revenues available to local educational agencies.

These benefits, however, are not only difficult to measure but vary among localities. Furthermore, the benefits to local educational agencies of increased revenues from income and sales taxes vary among the States according to State laws. Effects at the State level do not lend themselves to precise measurement.

The relevance of economic benefits the Federal Government may confer on a locality depends, at least in part, on the degree to which the Federal Government should be treated as private landowners and users are treated in a locality.

Even though the Commission has made a major effort to determine, with some precision, the effect of Federal activities on the fiscal capacity of local educational agencies, the Commission has found that the economic benefits of Federal activities with respect to Federal property has little if any relevance to any obligations which may arise from its ownership of real property. In the private sector, the economic benefit a community may derive from the use of private property does not act to relieve the owner of that property from an obligation to pay a tax on that property.

The Commission, in its effort to determine the extent to which the economic benefits which may accrue from Federal activities are available to local educational agencies, found that even though the original law authorizing the Impact Aid Program required that, under section 2 of that law, there be determinations about the fiscal benefits of Federal activities to local educational agencies, no means for making those determinations had been devised.

A method for making such determinations on a case-by-case basis has been devised by the Commission and has been tested in a small number of school districts. A report on this study is set out in the next section of this chapter.

No evidence found by, or placed before, the Commission thus far indicates that there are net fiscal benefits to local educational agencies resulting from Federal activities.

159/ H.R. Rep. No. 2287, 81st Cong., 2d Sess. 1 (1950).

Changes in the Laws of the States. Were the evidence to show that the economic benefits of Federal activities on local educational agencies compensate for the cost of Federal activities, a case could be made that the Federal Government pays for the cost of its activities. However, this is not the case. Empirical evidence before the Commission indicates that Federal activities result in a net economic burden and that the magnitude of the burden is commensurate with the entitlements of local educational agencies under section 3 of Public Law 874, except where State aid to local educational agencies is greater than the national average--in which cases, the States are compensating local educational agencies for the Federal burden.

This naturally raises the question of whether the States receive a net economic benefit from Federal activities and, if they do so, whether the States might not be expected to compensate local educational agencies for the burden placed upon them by those activities. The Commission has no evidence with respect to net economic benefits to the States from Federal activities, and such evidence could not be had without conducting statewide economic impact studies similar to those conducted for local educational agencies. These studies were beyond the resources of the Commission and were not conducted. Even if such studies provided evidence that Federal activities conferred a net economic benefit on the States, a question of relevance could be raised: are the economic effects of Federal activities relevant to how the States finance public education, and should the Federal Government make policy based upon a relationship between the benefits accruing from its activities and their potential effect on school finance? If so, it would seem that a double violence to the federal system of government would be the result. Not only would the Federal Government adversely affect local governments' ability to finance themselves, but it would, either directly or indirectly, dictate to the States the means by which they finance their schools and the relationship between the States and their subdivisions.

The Commission considered this question and determined that even if the economic benefits of Federal activities were relevant to the school finance laws of the States, the relationship between the States and their subdivisions is solely within the prerogatives of the States, that such relationship is not properly addressed by this Commission, and that the Federal Government ought to be neutral on issues which affect that relationship.

To do otherwise would be to open questions not within the mandate of this Commission and not answerable by this Commission with the resources available to it. This Commission could not properly recommend to the State of New Hampshire that it have an income tax or that it have a greater State share of the cost of education. This report is submitted to the President and the Congress of the United States with recommendations for the Federal Government to act upon. Since the Federal Government can not tell New Hampshire how to tax its citizens or how finance its schools, recommendations by this Commission to that effect would be useless.

The States are changing their school finance laws without Federal interference. There appears to be a trend toward equalization of expenditures among local educational agencies within the States, toward greater State aid to local educational agencies, and toward less reliance on real property taxes for revenue to support the total cost of public education. This Commission has no views with respect to that trend. Respecting the laws of the States, however, the Commission wishes not to make recommendations which would inhibit that trend.

Other changes in State laws could take place which would affect the Federal Government and the Impact Aid Program. If the States were to cede to the Federal Government exclusive jurisdiction over all Federal property within their boundaries and to persuade the Congress to change 40 U.S.C. 255 to require acceptance of that jurisdiction, the States could effectively require the Federal Government to pay the full cost of education for children residing on that property. In addition, the States could impose an occupation tax on all their residents and give an indirect credit on that tax for persons employed within their jurisdictions--thus shifting the cost of educating children whose parents are employed on property within the Federal jurisdiction to those parents and, indirectly, to the Federal Government. The result could be a nationwide system of federally-operated schools similar to that now supported under section 6 of Public Law 874. The Commission does not make recommendations to this effect, even though such recommendations would probably be more nearly within its mandate than those affecting the school finance laws of the States.

Requiring That All Federal Agencies Pay the Full Cost of Their Activities. The full cost of all the activities of Federal agencies does not appear in the Budget of the United States. The Budget only shows anticipated new obligations authority and expected outlays in Federal funds for Federal agencies. It does not include estimates with respect to expenses incurred by State and local governments in support of the activities of those agencies in the form of sewers, police and fire protection, traffic safety, highway and street maintenance, health services, and education. Yet these local services are rendered to the Federal Government in the same manner as if the Federal Government were a private organization, paying local taxes. No estimates are available with respect to the cost of these activities.

When a military installation is proposed, the cost estimates and the cost/benefit ratios are calculated with respect to the Federal Government. There is no evidence that major consideration is given to whether the local governments in the area affected by such a proposed facility are able to provide the continuing local services made necessary by that facility.

At the same time, estimated costs do include those arising from utilities--electricity, telephones, and gas, presumably because utilities are generally privately owned and the use of their services without compensation would constitute an unconstitutional taking of property without just compensation. Local governments are not so protected--yet local taxpayers are paying the costs, frequently without just compensation. Would the situation be different if either the utilities were publicly owned or the local services were provided by privately owned organizations?

The Commission gave more than passing consideration to the idea that an agency, such as the Department of Defense, should provide for the education of the children of its employees and that of children residing on its property from that Department's budget, rather than from that of the Education Department and that payments for the cost of education so provided should be arranged by local base commanders. Similar arrangements are now made in some localities for police protection and some other public services. Outside the United States, the Department of Defense does provide for the education of military dependents, and, prior to 1950, there were a number of small programs for the education of military dependents in the United States. Public Law 874 even now has vestiges of this old policy. A return to those early years is not recommended. It is worth speculating, however, whether there would be opposition by the Education Department to Impact Aid if the cost of the program were to be estimated in the budget of other Federal agencies.

Consent to State Taxation or In-Lieu of Taxes Payments. The Congress could fulfill the obligation arising from Federal ownership and use of land by consenting to State and local taxation. Difficulties with assessment practices, the setting of tax rates, and collecting those taxes probably preclude that policy. Over the past 30 years, however, a number of alternatives to consent have been considered: in-lieu of taxes payments have been authorized for some kinds of Federal activities; the Advisory Commission on Intergovernmental Relations, after a year of study, has endorsed a comprehensive in-lieu of taxes payments program and has encouraged its adoption by the Congress.[160]

Proposals to make in-lieu of taxes payments to local educational agencies were considered prior to the enactment of Public Law 874 and have been restudied on several occasions. The Battelle Report considered the question and rejected the proposition. The Commission agrees with the Battelle conclusion and determined that further study of the issue was not merited at this time.[161/]

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[160] R.D. Ebel & J.E. Towles, Advisory Commission on Intergovernmental Relations, Federal Payments In-Lieu of Local Property Tax Payments (1980).

[161/] The Battelle study stated, in part:

> The option in relation to other evaluation criteria
>
> Payments in lieu of taxes have some appeal in terms of federalism. That appeal is that, if each level of government pays taxes to others, no level of government can effectively deny the revenue sources of another. On the other hand, as "the power to tax is the power to destroy," intergovernmental tax immunities have long been cherished in the United States.
>
> The economic rationality of payments in lieu of taxes can be argued from a number of perspectives. From the perspective of resource allocation to and within the Federal sector, payment of taxes removes some of the bias against doing things through private enterprise (whose prices includes taxes) rather than government agencies (whose prices do not include local taxes). However, for the Federal Government to begin to pay property taxes must be judged as an extension of the revenue-raising potential and, thus, inequities inherent in a tax that is probably already inequitable at a single rate, and is clearly inequitable when applied at hundreds of different rates by hundreds of school districts throughout a single State.
>
> Payments in lieu of taxes would unquestionably be expensive, particularly if the concept were extended to municipal, sewer district, county, library district, and similar property tax levies. It is doubtful that payments in lieu of taxes would be as good a device for fiscal equalization as other alternatives, such as revenue sharing, available. It is also doubtful that payments in lieu of taxes represent the most productive utilization of Federal dollars for elementary and secondary education. Thus, in terms of cost and education effectiveness, in-lieu payments are not attractive.

Battelle Memorial Institute, 91st Cong., 2d Sess., School Assistance in Federally Affected Areas: A Study of Public Laws 81-874 and 81-815, House Committee on Education and Labor 42 (1970).

H. SUMMARY

A review of the evidence regarding the necessity for continuing the Impact Aid Program reveals that the program was originally authorized as a means of mitigating the adverse effects of Federal activities on the financial ability of local educational agencies to carry out their functions--to compensate them for the burden placed upon them by Federal immunity from State and local taxation and by educating federally-connected children.

The program was designed to operate and does operate under the laws of the States regarding the financing and governance of local educational agencies. The program carries with it no Federal education policy; in fact, it is intended to preserve local control over education by compensating them for local revenues, without which those agencies would become more dependent upon the State and commensurately less subject to local control.

Evidence against the Impact Aid Program was presented by the Education Department as follows:

(a) the Impact Aid Program overpays local educational agencies, in that entitlements are greater than the financial burden placed upon them by Federal activities;

(b) in most instances the economic benefits of Federal activities to localities compensate for the burden placed upon them by those activities;

(c) if those benefits are not available to local educational agencies, it is the result of ineffective State and local educational financing systems;

(d) the Government must take budgetary constraints into consideration and set priorities among education programs on the basis of those constraints; and

(e) other education programs have a higher priority with the Education Department than that given to Impact Aid.

The adequacy of the school finance laws, budgetary constraints, and priorities in funding among education programs are subjects not placed within the scope of the mandate given the Commission by the Congress.

Regarding the statements made that the entitlements overcompensate for Federal burden and the economic benefits from Federal activities, the Commission conducted hearings and research to determine their validity. The original premises upon which the program was based were examined:

(1) that Federal immunity from State and local taxation deprives local educational agencies of necessary revenues;

(2) that, under the laws of the States, the owners and users of real property have an obligation to support public education; and

(3) that the Federal Government should assist local educational agencies in providing education for federally-connected children.

The law regarding Federal immunity from State and local taxation, under the Supremacy Clause of the Constitution, has been reviewed and, even though finer distinctions have been drawn allowing more taxation of private interests in Federal property, the doctrine of immunity still stands and deprives local educational agencies of revenues. A factor in limiting the broad coverage of that doctrine has been a recognition, on the part of the courts, that Federal immunity must be balanced against the need of local governments for revenues. Even though there is a considerable body of opinion that such balancing should be carried out through the political branches of the Government, the Supreme Court has recently decided that it can limit the power of the Federal Government when the federal system of government is threatened by the exercise of otherwise valid powers of the National Government.

There have been significant changes in State laws regarding school finance, with a trend toward a greater share of the cost of education and less reliance upon real property taxes for the support of education. These changes, however, have not been so substantial as to change greatly the patterns in school finance into which Impact Aid was designed to fit or as to merit substantial alteration of the program as it relates to the financing of public schools.

The Federal Government has a long-standing interest in the education of federally-connected children and has, over the years, recognized an obligation for their education. On the basis of that interest and obligation, the Federal Government should assist local governments which provide education for those children, in that the cost of their education constitutes a burden on those local educational agencies.

There is no evidence to support the assumption that there are net fiscal benefits to local educational agencies arising from Federal activities; and, in the case studies conducted by the Commission, the net fiscal burden is generally commensurate with the amounts to which the local educational agencies studied are entitled under section 3 of Public Law 874.

From this evidence the Commission has concluded that under the federal system of government, there is an obligation on the part of the Federal Government to mitigate the adverse effects of Federal activities on local educational agencies and that, even though other means of doing so may be possible, a program similar to that authorized by Public Law 874 is necessary.

For these reasons the Commission recommends that the Impact Aid Program be continued.

II. SHOULD THERE BE BASIC CHANGES IN THE IMPACT AID PROGRAM?

During the thirty years since the Impact Aid Program was first authorized circumstances have changed which require modifications and refinements in the program. Most significant of these are (1) the implicit development within the Public Law 874 concept of providing an adequate level of education for federally-connected children, and (2) the development of analytical techniques in the field of economics which make possible the measurement of the burden placed upon local educational agencies by Federal activities. With respect to these issues recommendations are made.

A. ADEQUATE LEVEL OF EDUCATION FOR FEDERALLY-CONNECTED CHILDREN

Beginning in 1953 and continuing over the course of the following 14 years, the Congress amended Public Law 874 in order to alter the method for computing the amounts to which local educational agencies are entitled thereunder by establishing minimums in the local contribution rate and increasing those minimums. The legislative history of those amendments indicates that there was a concern for the adequacy of the level of education for federally-connected children and a sense of obligation to provide them with an adequate level of education, regardless of where they went to school.

This concern has been found applicable both to children who reside on tax-exempt property and to those whose parents are employed on such property. With respect to the former, the provisions of section 6 of Public Law 874 are an oblivious expression of that concern. With respect to the latter, a parallel can be drawn between the Federal Government as an employer and private employees who are concerned about the schools for the children of their employees.

Not only does the Federal Government have an obligation with respect to a fiscal burden on local educational agencies resulting from tax immunities, but, as a matter of sound public policy, it must make an effort to provide its employees with some assurance that, whenever they work for the Government, their children can have at least a minimum level of education.

Even though there is no explicit statement in the law expressing the concept of adequate level of education, the effect of the amendments, which established and increased minimum local contribution rates, was to increase payments for local educational agencies having per-pupil expenditures of less than the average of such expenditures in the States in which they were located and for local educational agencies in States having average per-pupil expenditures of less than the national average of such expenditures. These amendments represented a movement toward providing an adequate level of education for federally-connected children.[162]

This movement was reinforced in 1974 and 1978 by amendments which set local contribution rates in excess of 100 percent with respect to certain federally-connected children for whom the cost of education was obviously greater than the average: for handicapped military dependents the rate was set, in 1974, at 150 percent of the normal local contribution rate, and for children residing on Indian lands the rate was set, in 1978, at 125 percent thereof.

A review of the history of Federal policy regarding the education of military dependents and Indian children reveals a long-standing policy in favor of providing, as a matter of obligation, an adequate level of education for them.[163]

The legislative history of Public Law 874 and the amendments thereto indicate that the Congress intended that the Federal Government, as a landowner, should, to the extent practicable, be treated in the same manner as private landowners. Since the method for computing the amounts of payments under the program was not tied to the manner in which the States taxed real property, it is only logical to conclude that the intention has been to treat Federal property as private property regarding the obligations property owners have, under the laws of the States, for the education of children residing on their property or whose parents are employed on their property.

The unstated policy in favor of an obligation to provide an adequate level of education for federally-connected children has been effected by unduly complicated legislative language in the law. An open expression of that policy could make possible a simplification of the statute and the formula for determining the amounts to which local educational agencies are entitled.[164/]

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[162] Explicit statements as to the congressional motivation for the "minimum LCR" amendments are rare on the official record. Statements by congressional staff persons who are knowledgeable with respect to both the Impact Aid Program and its legislative history generally have assumed that the intention behind these amendments was to make an effort to increase the level of education for federally-connected children in local educational agencies having low per-pupil expenditures. Labovitz found evidence in support of this assumption. [I.M. Labovitz, *Aid for Federally Affected Public Schools* 1-39 (1963).] The same type of evidence was found in the Battelle study. [Battelle Memorial Institute, 91st Cong., 2d Sess., *School Assistance in Federally Affected Areas: A Study of Public Laws 81-874 and 81-815*, House Committee on Education and Labor (1970).]

[163] *See* Appendix N, *infra*, with regard to the education of military dependents.

For these reasons, the Commission has concerned itself with the questions of what is the obligation of the Federal Government for the education of federally-connected children and, assuming such an obligation, how should that obligation be demonstrated in terms of the amounts to which local educational agencies are entitled under the Impact Aid Program.

The Federal obligation is that there be compensation and that the amount of the compensation be based upon an assessment of, but need not necessarily equal, the types of burdens imposed. Evidence from the hearings of the Commission tends to indicate that the revenue burden (calculated on the basis of taxing Federal property at the same rate as other property in localities) is so great that it would be unreasonable to expect that sufficient funds would be available to cover the cost of full compensation. In addition, an agreed upon method for uniform calculations would be difficult to achieve. Yet, the nature of the revenue burden is such that it must be taken into consideration in determining that portion of the burden for which compensation ought to be given, especially when Federal property is so extensive within a school district that the revenue burden impairs the ability of its local educational agency to function.

The service burden is a more reasonable and measurable factor, in that actual numbers of children and actual expenditures of funds can be known. Consistent with the principle of respecting the laws of the States, using average per-pupil expenditures in a State (or in all the States, whichever is greater) would be a fair measure of an adequate level of education. Of course, there are circumstances in which the cost of education varies so greatly from the average that exceptions would be merited. Both the minimum LCR's in current law and the use of State and national average per-pupil expenditures in computing entitlements under Title I of the Elementary and Secondary Education Act serve as precedents for this measure.

When computing the amount of the service burden, consideration ought to be given to the extent that the cost of providing an adequate level of education is beyond the ability of a local educational agency. The cost of education is the major factor in determining the amount of burden.

[164/] Congressional staff have reasoned that heretofor an explicit statement regarding an adequate level of education has been avoided for fear that, since the phrase involves matters of judgment, it might have been construed by some to authorize Federal intervention in the control of local education, contrary to the other policies underlying the program. Whether that fear is still justified is a political question and should be decided in the proper forum for resolving political questions--the Congress.

For these reasons the Commission recommends that the law ought to include an explicit recognition that in determining the amounts to which local educational agencies are entitled thereunder include a consideration of an adequate level of education for federally-connected children.

B. DETERMINATION OF THE NET FISCAL BURDEN PLACED UPON LOCAL EDUCATIONAL AGENCIES BY FEDERAL ACTIVITIES[165]

When Public Law 874 was first enacted, the Congress acted upon an assumption that there was a net fiscal burden placed upon local educational agencies by Federal activities. No measurement of that burden was required except in the case of payments made under section 2 of the law.[166] Instead, the law provided for compensating local educational agencies for the Federal burden by the use of a "local contribution rate" which was designed originally to make a payment for each federally-connected child. This payment was roughly equivalent to the amount contributed per child by private property owners in comparable communities.

Since Public Law 874 was enacted in 1950, analytical techniques in the field of economics have improved and better data concerning Federal activities have become available. Improved techniques and better data make possible an examination of the basic assumptions about Federal burden.

In order to test these basic assumptions, evidence concerning analytical techniques in the field of economics was sought and the availability of data concerning Federal activities was examined in order to determine the feasibility of conducting an economic impact study. During the course of gathering this information, it was discovered that the National Planning Association had proposed a contract to the Office of Education to conduct an economic impact study. The Office of Education chose not to fund the contract. The proposal did contain a description of two models for examining the fiscal effects of Federal activities on localities: one was a case study model and the other used an aggregate method for local educational agencies in general.

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[165] Material included on pages 151-170 and G2-G3 of this report has been published, without the Commission's authorization, as an article in the 1981 Spring issue of the Journal of Education Finance. No part of any section in this report can be attributable to any particular member of the staff of the Commission.

[166] Section 2 of Public Law 874 provides for payments to local educational agencies that administer school districts in which substantial real property has been acquired by the Federal Government; payment is provided if that acquisition has placed a substantial and continuing financial burden on those agencies for which there is no substantial compensation for the loss of revenue by increases in revenue from Federal activities. No means has been devised by the program administrators for measuring either the loss of revenue resulting from Federal acquisition of real property or increased revenues resulting from Federal activities.

On the basis of the concepts underlying the case study model, the Commission developed a model specifically designed to determine the effect of Federal activities on the finances of local educational agencies.

The economic impact study conducted by the Commission attempts an intensive, sophisticated evaluation of the fiscal burden[167] and benefits received by local educational agencies from Federal activities which affect them. This evaluation is based upon a measurement of the effect of Federal activities on the revenues and the expenditures of a local educational agency, compared with the effect on those revenues and expenditures of the site had it been used, or were the site to be used, for other purposes.

In order to measure these effects, the Commission has developed an economic model that determines the effect on expenditures and revenues of a site affected by Federal activities and the effect on those expenditures and revenues of that site had it been subject to alternative use. The two determinations are compared with respect to a single site, and if the expenditures exceed revenues under current use by a greater amount than any excess of expenditures over revenues under alternative use, the model indicates a federally-imposed burden; if the excess of expenditures over revenues under current use is less than would have been the case under alternative use, the result is a benefit.

Expenditures under current use are determined by multiplying the number of children in attendance at the schools of a local educational agency as the result of a Federal activity by the average per-pupil expenditure determined for that agency.

The number of children in attendance at the schools of a local educational agency as the result of a Federal activity is equal to the sum of the number of schoolchildren of persons employed on the base and the number of children of employees whose jobs were induced by the spending of base employees and their families. The number of induced employees[168] is determined from the use of an employment multiplier that calculates the non-Federal employment in a community resulting from spending by families of base employees.

The per-pupil expenditure for a local educational agency is determined on the basis of average per-pupil expenditures in the State in which the local educational agency is located and the weighted average of per-pupil expenditures in comparable school districts approved by the Department of Education or the respective State education departments.

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[167] In this section of this chapter the term "burden" describes a mathematical measurement made by the application of the economic model to the facts relating to the particular local educational agency in question. That term does not reflect, in any way, the concept of "adequate level of education" which is included in the meaning of the term "burden" when used elsewhere in this report.

[168] "Induced" refers to those employees (as well as their schoolchildren and income) in the commercial sector who were hired to accommodate the spending of base employees. These employees are the result of the "multiplier effect."

Revenues affected by Federal activities are determined by calculating the Federal contribution to four primary sources of revenue: residential property taxes, commercial property taxes, State aid for local educational agencies, and miscellaneous "other" local revenue.

Residential property tax revenues are calculated by multiplying the residential property revenues in the local educational agency by the percentage of residential income in the district comprised by the income of base-attributable[169] employees.

Commercial property tax revenues are calculated by multiplying the total commercial property tax revenue in the district by the percentage of consumption in the district that is attributable to the base.

State aid for local educational agencies is affected by Federal activities because most State aid payments take into consideration the assessed valuation of taxable property and the number of children in the district of a local educational agency. When property is exempted from taxation or when the number of children increases, the average per-pupil assessed valuation decreases and the amount of State aid triggered by the base increases. To determine the amount of State aid attributable to the base, the model inserts into the State formula the amount of assessed valuation associated with the places of residence, employment and shopping of base-attributable employees and the number of schoolchildren associated with these employees.

Implicit in this calculation is the fact that the true measure of any Federal burden on a local educational agency is not achieved because State aid programs do, to some extent, pay the cost of Federal activities. The model does not attempt to determine whether the States themselves have a net fiscal burden as a result of the Federal presence. No method for measuring the fiscal benefits received by the States from Federal activities has been devised, nor has a means for determining how any such theoretical benefit accrues to a particular local educational agency been devised.

The Federal contribution to miscellaneous "other" local revenue, which includes local income taxes, fees, and charges, is determined by multiplying total "other" revenue in the district by the proportion of income or population (depending on whether the tax is a function of income or population) comprised by base-attributable employees.

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[169] "Base-attributable" refers to the sum of "base-connected" and "base-induced," and applies to employees, their incomes, their schoolchildren, and their families. It also applies to the expenditures and revenues of the local educational agency that have been accounted for by base-attributable families. Also, see note 170, *infra*.

The same procedures are used to calculate the fiscal effect of alternative use of the site, except that judgments are exercised as to what the alternative use would have been. Alternative use is determined on the basis of local experts' projections about how the base site would have been used had there never been a Federal presence. When the Federal installation was established before World War II, however, this alternative use is determined on the basis of how the site would be used if the Federal base were to close.

The Commission's economic impact study measured the effects of military bases on four local educational agencies: Bellevue School District, in Bellevue, Nebraska; Douglas School District, in Box Elder, South Dakota; Escambia County School District, in Pensacola, Florida; and Chambersburg Area School District, in Chambersburg, Pennsylvania. The military bases affecting these districts are, respectively, Offutt Air Force Base, Ellsworth Air Force Base, the Pensacola Naval Air Station, and Letterkenny Army Depot. The following chart shows these relationships:

School District	Town	Military Base
Bellevue, NB	Bellevue	Offutt Air Force Base
Douglas, SD	Box Elder	Ellsworth Air Force Base
Chambersburg, PA	Chambersburg	Letterkenny Army Depot
Escambia Co., FL	Pensacola	Pensacola Naval Air Station

In all four districts, base-connected children[170] constitute at least 20 percent of the total number of children in average daily attendance at the schools of the local educational agency. Two of the districts, Bellevue and Douglas, are "Super A"[171] districts, where over 20 percent of the children in attendance are the children of military employees living on base. A third district, Chambersburg, has a large number of civilian "B" children,[172] the children of civilian base employees living off base. Escambia County, the fourth district, has a substantial number of both military "B"[173] and civilian "B" children--all the children of employees living off base.

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[170] Base-connected children are those who live with parents either living on, working on, or both living and working on a military base. There are two types of base-connected children: an "A" child lives with a parent who both lives and works on a military base; a "B" child lives with a parent who either lives or works (but does not do both) on a military base. Base-connected pupils do not include those federally-connected pupils whose parents live, work, or live and work, on Federal installations other than military bases.

[171] "Super A" districts, as defined in §3(d)(1) of Public Law 874, are those districts where 20 percent or more of the pupils enrolled in school live with parents who both live and work on Federal property.

[172] Civilian "B" children are those who live with a non-military parent who either lives, or works, but not both, on Federal property.

[173] Military "B" children are those who live with a military parent who does not live on Federal property.

The following table shows the composition of the base-connected pupil population in these districts:

Number of Total Base-Connected (B-C) Children,
Districts, 1979

(figures in parentheses show percentage
of total average daily attendance)

	Total ADA	B-C ADA	# A's	# Mil B's	# Civ B's
Bellevue	9,191 (100)	6,005 (65)	3,256 (35)	2,258 (25)	490 (5)
Douglas	2,584 (100)	2,037 (79)	1,808 (70)	141 (6)	88 (3)
Escambia Co.	40,907 (100)	7,617 (19)	713 (2)	3,324 (8)	3,580 (19)
Chambersburg	8,346 (100)	1,692 (20)	74 (1)	42 (1)	1,576 (19)

Source: SAFA

Results of Economic Impact Study. The Commission's study revealed that all four local educational agencies suffered net financial burdens in 1978-79. The results and each local educational agency's Public Law 874 entitlement accounted for by the base[174] are summarized in the following table:

School District	Burden (Million $)	Entitlement Accounted for by the Base (Million $)
Bellevue	$6.2 to $6.4	$6.0
Douglas	$1.5 to $1.6	$1.9
Escambia Co.	$0.7 to $0.8	$3.2
Chambersburg	$0.6 to $0.7	$0.7

Source of entitlement data: SAFA

The most important conclusions to be drawn from these findings are the following:

-- ALL THE BASES IMPOSED A BURDEN ON THEIR RESPECTIVE LOCAL EDUCATIONAL AGENCIES.

174/ Under Public Law 874, the amount of Impact Aid a local educational agency receives is based on a figure known as that agency's "entitlement." The entitlement is determined by multiplying a weighted number of federally-connected children by the local contribution rate (LCR)--an approximation of the per-pupil expenditure that would have been paid from local property tax revenues had those revenues not been reduced by Federal activities.

The Public Law 874 entitlement accounted for by the base is that portion of a local educational agency's entitlement that has been triggered by pupils whose parents work on the military base. A local educational agency's total entitlement is a function of all its Federal activities, not just the military base.

-- THE "SUPER A" DISTRICTS, BELLEVUE AND DOUGLAS, SUFFERED THE MOST SEVERE BURDENS.

-- IN THREE OF THE FOUR CASES, THE BURDEN IMPOSED BY THE BASE WAS COMMENSURATE WITH THE IMPACT AID ENTITLEMENT.

Analysis. The factors underlying the Commission's results were the following:

1) Each local educational agency suffered a burden. All four agencies were burdened because the total revenue attributable to military base employees failed to compensate for the costs imposed by these employees. This revenue shortfall resulted from insufficient Federal contributions to property tax revenue. In other words, property tax revenues attributable to base employees failed to cover the local share of the costs of educating the employees' schoolchildren. The evidence implies that the burdens did not result from shortfalls of other revenue: base-attributable employees triggered more State aid than other employees in the district and contributed as much miscellaneous "other" local revenue.

Three of the four States in the study contributed more aid per child to the agency studied than they did, on average, to other agencies in the State. In these three impacted districts, the State's per-pupil contribution was over 13 percent higher than the State average.

State aid was higher to the impacted districts because the State formulas increased aid as a district's assessed valuation decreased and its number of pupils increased. As a result, the lower per-pupil assessed valuation of impacted districts triggered more State aid for those districts.

Furthermore, in all four districts studied, the State share of costs for the base-attributable children within the district was higher than for non-base-attributable children. This is because the assessed valuation associated with each base-attributable child was lower than for each non-base-attributable child. The assessed valuation of base-connected "A" children consists simply of their families' contribution to commercial property tax revenues; the assessed valuation associated with "B" children includes their families' contributions to residential and commercial property tax revenues. Unlike non-base-attributable children, there is no assessed valuation associated with the place of employment of the parents of base-connected children. Consequently, more State aid, which increases when assessed valuation per pupil decreases, is triggered by base-connected children than by non-base-connected chidren.

The amount of State aid per pupil provided throughout the States and to the districts studied and the amount triggered by base-attributable pupils and non-base-attributable pupils in the districts studied is shown in the following table:

State Contribution to General Fund Revenue for the States, Districts, and Base- and Non-Base-Attributable Children, FY 1979

	State Aid* (million $)	ADA	State Aid/ADA
Nebraska	$95.1	278,808	$341
Bellevue	5.1	9,191	555
Base-Attrib.	3.8	6,168	613
Non-Base-Attrib.	1.3	3,023	438
South Dakota	31.8	129,955	244
Douglas	1.2	2,584	482
Base-Attrib.	1.0	2,054	482
Non-Base-Attrib.	0.2	530	482
Florida	1,305.3	1,438,655	911
Escambia County	42.1	40,907	1,030
Base-Attrib.	11.2	10,017	1,117
Non-Base-Attrib.	30.9	30,890	1,002
Pennsylvania	1,644.1	1,856,400	875
Chambersburg	6.4	8,346	766
Base-Attrib.	1.7	2,093	825
Non-Base-Attrib.	4.7	6,253	745

* Figures rounded for clarity.

Source: State education departments.

The local share of per-pupil expenditures in the four districts was paid from property taxes and from miscellaneous "other" sources of revenue, which included local income taxes, employee taxes, per capita taxes, interest income, and school lunch revenues.

The data suggests that employees attributable to the base contributed as much to these miscellaneous "other" local revenues as did non-base-attributable employees in the four impacted districts. The following table shows the amount of "other" local revenue contributed by base-attributable and non-base-attributable employees, the number of children connected with both groups of employees, and the amount of "other" local revenue associated with each child in the two categories:

Miscellaneous "Other" Local Revenue Associated with Base-Attributable (B-A) and Non-Base-Attributable (Non B-A) Children, 1979

	"Other" Local Revenue (thousands $)		ADA		"Other" Local Revenue/ADA	
	B-A	Non B-A	B-A	Non B-A	B-A	Non B-A
Bellevue	$412	$203	6,168	3,023	$67	$67
Douglas	84	18	2,054	530	41	33
Escambia Co.	576	1,731	10,017	30,890	58	56
Chambersburg	522	2,126	2,093	6,253	249	257

Source: The local educational agencies studied.

The amount of miscellaneous "other" local revenue associated with each base-attributable child is virtually identical with the amount associated with each non-base-attributable child in all four school districts. Base employees' contributions to "other" local revenue appear to be the same as non-base employees' contributions. This is so because of the nature of these local taxes, fees, and charges. Most of the miscellaneous "other" sources of revenue in the local educational agencies studied were a function of population and number of children; Chambersburg imposes a local income tax that is proportionate to income. Both the incomes of base-connected employees and the number of children associated with those employees were no less--and usually were higher--than the incomes or number of children of non-base families in the four local educational agencies. The revenues proportionate to income and population, therefore, do not differ between base and non-base employees. Thus, it does not appear that the Federal burden is caused by failure of base employees to pay their share of miscellaneous "other" local revenues.

Because the State share of the costs of base-connected children is far above the norm, and base-connected families pay as high a portion of miscellaneous "other" local taxes as do non-base families, the property tax is the only source of revenue to which base employees could fail to have contributed the same share paid by non-base employees. The following table seems to confirm the suspicion that insufficient property tax contributions by base families resulted in the revenue shortfall in the four local educational agencies studied. The table shows the property tax revenue contributed by base-attributable and non-base-attributable families and the number of children associated with these families in the four local educational agencies. The results are as follows:

Property Tax Revenue (PTR) Associated with Base-Attributable (B-A) Children and Non-Base-Attributable (Non B-A) Children, 1979

	PTR (million $)		ADA		PTR/ADA	
	B-A	Non-B-A	B-A	Non-B-A	B-A	Non-B-A
Bellevue	$1.04	$2.31	6,168	3,023	$169	$764
Douglas	0.11	0.25	2,054	530	54	480
Escambia Co.	1.99	12.43	10,017	30,890	199	402
Chambersburg	1.25	4.65	2,093	6,253	597	744

Source: SAFA, local educational agencies.

The results show that the property tax revenue associated with each base-attributable child is substantially less than the revenue associated with each non-base-attributable child in all four cases. This data, when considered with data on State contributions and miscellaneous "other" sources of local revenue, shows that the burden in the four districts is the result of a shortfall in the contributions of property tax revenue from base-attributable employees. Because the model considered property tax payments associated with employees' place of residence, employment, and shopping, it is likely that the Commission's result stemmed from the property tax exemption of military base property, including on-base residences and commercial establishments.

While the tax-exempt status of the base appears to explain the difference in per-pupil property tax contributions from base-attributable and non-base-attributable families, it seems arguable that a sufficiently high property tax rate applied to the taxable property in the district could yield enough revenue to compensate for the difference. Though the economic impact study did not examine local effort in detail, data collected for the study does not appear to support the conclusion that burden results from insufficient local effort. The following table shows the per-pupil taxable wealth and the local tax effort of the four districts studied and of the States in which they are located:

Taxable Wealth and Tax Effort for the Districts
and Their States, FY 1979

	Assessed Valuation/ADA	Mill Rate
Bellevue	$ 8,836	42.59
Nebraska	30,669	47.61
		AGRIC./NON-AGRIC.
Douglas	3,555	26.00/42.00
South Dakota	35,279	NA/36.84
Escambia Co.	46,266*	8.00
Florida	82,058*	7.89
Chambersburg	47,816+	20.90†
Pennsylvania	49,316+	23.50†

Source: State education departments.

* Florida Department of Education data on full-time equivalent students (FTE), converted to SAFA definition of ADA using 1978-79 data from SAFA.

+ Represents market value per ADA.

† Represents equalized mill rate.

The table shows that the per-pupil assessed valuation in the impacted districts is, in all cases, less than the average in the respective States. Assessed valuation per pupil shows the value of taxable property available to finance the cost of educating children in a district.

It is a good measure of wealth because it reveals the revenue-raising potential of an agency in relation to its expenditure needs. The per-pupil assessed valuations in the "Super A" districts, Bellevue and Douglas, are far below the average in the respective States; in neither case is the per-pupil assessed valuation as high as 30 percent of the State average. In Escambia County, the per-pupil assessed valuation is only 56 percent of the State average. Only Chambersburg, where per-pupil assessed valuation is 97 percent of the State average, does the figure for the impacted district approach the State average.

The other category in the table, the local mill rate, shows the tax effort of the four agencies. Two of the four agencies--Douglas and Escambia County--are taxing at the highest rate allowed by State law; the other two--Bellevue and Chambersburg--are taxing at a rate lower than the State average. Because Bellevue's per-pupil assessed valuation is so far below the State average, however, boosting Bellevue's tax effort to the level of the average effort in the State would probably not provide a great deal of property tax revenue. Of the four districts studied, only in Chambersburg does it appear that an increase in local effort to the level of the average effort in the State might make a substantial difference in compensating for the property tax shortfall from base-attributable families.

2) The "Super A" districts suffered the most severe burdens. The local educational agencies suffering the heaviest burdens were Bellevue and Douglas, the two agencies studied where over 20 percent of the children were the children of military personnel who both lived and worked on base. Bellevue suffered a burden of $6.2 to $6.4 million and Douglas a burden of $1.5 to $1.6 million in 1979, both substantially higher than the burdens incurred by the other two agencies. The burdens per base-attributable child were also substantially higher in these two districts: Bellevue's burden per child was $1,049, the highest of all the districts, and Douglas's was $760, the second highest. These latter results show that the burden associated with each base-attributable child was highest in the districts where the proportion of "A" children was highest.

This pattern is the result of the fact that base employees living on base contributed less to property tax revenues, on average, than did employees living off base. On-base employees not only paid no taxes on their residences, but were more likely to shop at the tax-exempt commercial establishments on base. Consequently, the property tax per pupil paid by base-attributable families was lowest in Bellevue and Douglas, the two "Super A" districts.

The following table shows the study's estimates of burden per base-attributable child and the property tax per pupil paid by base-attributable families in the four districts studied:

Burdens and Base-Attributable Property Tax Revenues (B-A PTR) Per Base-Attributable Child (B-A ADA), 1979

	Burden (million $)	B-A PTR (million $)	B-A ADA	Burden/ ADA*	PTR/ ADA
Bellevue	$6.2-6.4	$1.04	6,168	$1,049	$169
Douglas	1.5-1.6	0.11	2,054	760	55
Escambia Co.	0.7-0.8	1.99	10,017	99	199
Chambersburg	0.6-0.7	1.25	2,093	385	597

* Computed using the midpoint of the burden.

Source: SAFA, local educational agencies.

The data in the table show that the overall burdens and the burdens per base-attributable child were both highest in the "Super A" districts, and that the property tax contributions per child from base-attributable families were lowest in the "Super A" districts. These results suggest that Public Law 874 is correct in assuming that the families of "A" children impose a greater burden on local educational agencies than do the families of "B" children.

3) Burden is commensurate with entitlement in three of four cases. The study found that the size of the burden imposed by the military bases was within 20 percent of the Impact Aid entitlement in three school districts: Bellevue, Douglas, and Chambersburg. Only Escambia County's burden did not approximate its entitlement: the burden in Escambia County was substantially less than its entitlement.

Entitlement under Public Law 874 is the product of the local contribution rate (LCR) and the weighted number of federally-connected children.[175] The LCR is an approximation of the expenditure per pupil which would have been paid from local property tax revenues had those revenues not been reduced by Federal activities. The per-pupil expenditure figure is either a weighted average of the per-pupil expenditures of five comparable local educational agencies in the State, half the State average per-pupil expenditure, or half the national average per-pupil expenditure, whichever is highest.

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[175] "Federally-connected children" are those who live with parents either living on, working on, or both living and working on, Federal property. There are two types of federally-connected children: an "A" child lives with a parent who both lives and works on Federal property; a "B" child lives with a parent who either lives or works (but does not do both) on Federal property. Federally-connected children include base-connected children as well as children whose parents live, or work, or both live and work, on Federal installations other than military bases.

The weighted number of federally-connected children is determined from the different weights assigned by statute to each category of federally-connected child. These weights--in the form of percentages--are designed to reflect the relative property tax burdens imposed by the families of the various categories of children. The formula multiplies each percentage by the number of federally-connected children in that category to find the weighted number of federally-connected children.

The size of the burden found by the Commission was commensurate with the district's entitlement in three of the four cases for both the following reasons:

- The discrepancies between the data used by the Commission and by the Public Law 874 formula offset each other. These discrepancies occurred in the determination of local contribution per pupil ("local contribution rate") in all three cases. In addition, when burden was commensurate with entitlement, discrepancies between the weighted number of pupils also occurred in the cases of Chambersburg and Escambia County, where the weights assigned by formula to the number of federally-connected children did not reflect the Commission's estimates of these families' contribution to local revenue.

- The variables used by the entitlement formula to estimate the property tax burden were, for the most part, the same factors that the Commission found determined burden. The economic impact study found, in its four case studies, that these variables--the number of children, the per-pupil expenditure, the local share of education costs, and the relative contributions of different types of base families--were the most important in determining burden. They collectively explained most of the shortfall in property tax revenue from Federal sources. The only variables that the Commission considered that were not taken into account by the entitlement formula were the fiscal effect of alternative use of the base site, and employees' contributions to commercial property taxes and miscellaneous "other" local revenue.

Discrepancies in Data. Discrepancies between data estimated by the Commission and by the Public Law 874 formula appeared in three figures: per-pupil expenditures, local share of expenditures, and the weights assigned to the different types of federally-connected children. The per-pupil expenditure figure used under Public Law 874 is two years old, but it includes Federal categorical aid to the local educational agency. The Commission study extracted Federal categorical funds from the Public Law 874 figure and updated the two-year-old data. The Commission removed Federal categorical aid from consideration of both expenditures and revenues because the Commission's intent was to examine the Federal impact on current expenditures over which the local educational agency has discretion. The study was designed to be consistent with Public Law 874, which reimburses local educational agencies on the basis of current expenditures.

The Commission's estimates of per-pupil expenditure exceeded the per-pupil expenditure data used under Public Law 874 in three of the four cases. The inflation in education costs between 1977 and 1979 that the Commission's figure captured more than made up for the amount of Federal categorical funds included in the figure used under Public Law 874, but excluded from the Commission's figure. Escambia County was the only exception; the per-pupil expenditure figure applied under Public Law 874 was higher than that found by the Commission because Escambia County used the national average per-pupil expenditure in determining LCR.

The local share of education costs was determined under Public Law 874 from the local share of costs in comparable districts. When the local educational agency chose to use one-half the State or national average to determine its LCR, the statute assumed that the agency contributed half the share of its education costs. In each of the four cases, the study estimated a local share lower than that determined under the Public Law 874 formula. This discrepancy occurred because per-pupil contributions from State aid were invariably higher to federally-impacted agencies than to non-impacted agencies. Moreover, the study determined that base-connected children triggered more State aid than did non-base-connected children in the four impacted districts. Because the Commission found the State contributing a higher share of the costs of base-connected children than did the Public Law 874 formula, the local share of these costs was lower in the Commission model than they were under the formula.

The combination of the Commission's higher per-pupil expenditure figures and lower local share figures resulted in local contributions per-pupil for Bellevue, Douglas, and Chambersburg that were close to the local contribution rates determined under Public Law 874 for these districts. In Bellevue and Douglas the local contribution per pupil figures were within 15 percent of their LCRs, as determined by the Public Law 874 formula; in Chambersburg, the local expenditure per pupil was within 27 percent of LCR. In Escambia County, however, local contribution per pupil was 62 percent below LCR.

The differences in per-pupil expenditure, local share, and local contribution per pupil between the Commission study and the Public Law 874 formula can be seen in the following:

Comparison of the Figures Used by the Commission and by P.L. 874
to Compute Local Contribution Per Pupil and LCR, Respectively

	Per Pupil Expend. (PPE)		Local Share (LS)		Local Contribution Per Pupil/LCR (PPE x LS)	
	Comm.*	PL 874	Comm.+	PL 874	Comm.	PL 874
Bellevue	$1,772	$1,568	.66	.81	$1,152	$1,272
Douglas	1,317	1,273	.64	.77	843	975
Escambia Co.	1,414	1,560	.21	.50	297	780
Chambersburg	1,972	1,775	.58	.50	1,144	888

* Average of State average and comparable districts' average expenditures for fiscal year 1979.

+ Study's estimates of non-State share of costs of base-attributable children.

In Bellevue and Douglas, the Commission's local contribution per pupil figures were comparatively close to the Public Law 874 local contribution rate because the discrepancy between the per-pupil expenditure figures and local share figures offset each other. The Commission's higher per-pupil expenditure and lower local share figures yielded a product of approximately the same amount as the LCR.

Chambersburg's entitlement was commensurate with the study's determination of its burden despite a 27 percent difference between the Commission's local contribution per pupil and the LCR. The Commission's local contribution per pupil figure was higher because both the per-pupil expenditure and the local share figures used by the Commission were higher than the corresponding figures applied by the Public Law 874 formula (Chambersburg uses half the State average per-pupil expenditure as its LCR). The Commission's estimate of burden and the Public Law 874 entitlement were still comparable, however, because the Commission considered base employees' contributions to commercial property tax revenue and to miscellaneous "other" local revenue while the formula did not. In addition, the Commission's estimate of the residential property tax revenue contributed from base employees was probably higher than that estimated by the Public Law 874 formula.

The weights in the entitlement formula reflect the assumption that property tax revenues derive from places of residence and employment alone. Employees living on-base are assumed to contribute no property tax revenue, and military employees living off-base are assumed to contribute revenue only through their residences. The Commission study, however, estimated the commercial property tax contributions of all base-connected employees living in the county. The per capita commercial property tax contributions of base employees to Chambersburg were the highest of all the districts studied both because the vast majority of base employees were civilian and because Chambersburg was the commercial center of Franklin County. In addition, the miscellaneous "other" local revenues--especially from local income taxes--were especially high in Chambersburg, constituting 25 percent of locally-raised revenues. Civilian base employees, like all residents, contributed to these revenues. Finally, the weights in the Public Law 874 formula assume that residential property tax contributions from base employees amount to 50 percent of the property tax contributions of non-federally-connected employees. The Commission did not rely on this assumption and instead estimated residential property tax revenue on the basis of residents' incomes. Since the average income of base employees was $18,000 in 1979--$6,500 higher than the average salary of other county employees--the Commission's method would have yielded a higher residential property tax contribution from base employees than from non-base employees.

The Commission's approach to estimating property tax contributions--both residential and commercial--from base families in Chambersburg led to higher estimates of the revenue contributed by these families than did the assumptions reflected in the weights of the Public Law 874 formula. These additional revenues served to balance the Commission's higher local contribution per pupil by lowering the burden found by the Commission model, yielding an overall burden commensurate with Public Law 874 entitlement. (In Bellevue and Douglas, in contrast, base employees' contributions to commercial property tax revenue and miscellaneous "other" local revenues were relatively small and their salaries more in line with those of non-base employees in the area.)

In Escambia County, the Commission's determination of burden was substantially lower than the Public Law 874 entitlement as a result of Escambia County's use of half the national average per-pupil expenditure to determine local contribution rate. The national average per-pupil expenditure was over $100 higher than the Commission's per-pupil expenditure figure, making Escambia County the only district studied where the per-pupil expenditure under Public Law 874 exceeded the figure used by the Commission. Far more important, however, was the fact that the Commission's estimate of the local share of base-attributable expenditures in Escambia County was substantially less than the 50 percent assumed by the entitlement formula. The Commission found that the State paid for 79 percent of the education cost of base-attributable schoolchildren in Escambia County--29 percentage points higher than the portion provided by the formula. The comparatively large State contribution to Escambia County revenue reduced the local share of revenue. Thus, both the Commission's per-pupil expenditure figure and its local share figure were lower than the figures used under Public Law 874. As a result, the Commission found a burden far less than Escambia County's entitlement.

In Escambia County, as in Chambersburg, another factor contributing to the relatively low burden was the discrepancy between the weights applied by Public Law 874 to the number of federally-connected children and the weights that the Commission would have determined from the data it used. This discrepancy was fairly substantial in the Escambia County study; as a result, the Commission model attributed more local revenue to base employees than the Public Law 874 model did. The reasons that the discrepancy occurred were the same for Escambia County as for Chambersburg: the commercial property tax contributions of base-attributable employees was relatively high; the amount of miscellaneous "other" local revenue contributed by base-attributable families was also relatively large; and the incomes of base employees were substantially higher than the incomes of non-base employees in the area.

The per capita commercial property tax contributions of base-attributable employees to Escambia County were the second highest of all the districts studied. The reasons for this were twofold: Pensacola Naval Air Station employed a higher percentage of civilians than did any other base but Letterkenny in Chambersburg; and Escambia County, especially the city of Pensacola, was the commercial center of the Pensacola Standard Metropolitan Statistical Area (SMSA). In addition, miscellaneous "other" local revenues constituted 14 percent of locally-raised revenue, a proportion second only to Chambersburg; base employees, like all residents, contributed to these revenues.

Finally, the Commission's study estimates residential property tax contributions on the basis of residents' income and not on the Public Law 874 assumption that base employees' residential property tax payments amount to 50 percent of overall property tax contributions from non-base employees. Because the average income of base employees was $15,000 in 1979--$3,000 higher than the average income of other State employees--the Commission's approach would have yielded a higher residential property tax contribution from base employees than from non-base employees.

Variables in the Formula Prove to Be the Key Factors in Burden. In each of the four case studies, the variables applied by the Public Law 874 formula largely explain the results found by the Commission. Those key variables--the number of children, the per-pupil expenditure, the local share of educational costs, and the weighting of the contributions of different types of base-connected families--were the most important components of Federal burden in the four districts studied. This was true despite the fact that the data used by the Commission for those variables differed from the data used by the Public Law 874 formula.

One factor not considered by the Public Law 874 formula that did play a small role in the Commission's results was the fiscal effect on the local educational agencies of alternative use of the base site. The Commission's intent in evaluating alternative use was to compare the present fiscal impact of the base on the local educational agency with the fiscal impact that alternative use of the site would have had. This comparison was essential to a full understanding of the base's impact because the site occupied by the base would have generated revenues and expenditures for the local educational agency if the base had not been established.

The study showed that alternative use in three of the four districts studied had virtually no effect on the determination of base impact. Projected alternative use of the site would have generated just enough revenue to finance the cost of educating the children associated with the site in Douglas, Chambersburg, and Escambia County. Under alternative use, the site would have provided sufficient revenue in the form of property tax revenue, State aid, and miscellaneous "other" local revenue to compensate for the costs of the children affiliated with the site. The site would have imposed neither a benefit nor a burden.

In Bellevue, however, alternative use played a slightly more significant role. Alternative use of the base site in Bellevue was projected to be largely industrial. (See Bellevue Profile, Attachment II, infra.) The local educational agency would have collected more revenues from the site than it would have paid out in educational expenses because the industry on the site would have contributed a substantial amount of property tax revenue, while relatively few of the employees--and their schoolchildren--would have lived in the district.

The Commission substituted its own data into the Public Law 874 formula to find out just how much of the Commission's results could be explained by the variables in the formula. The product of local contribution per pupil (LCR) and the weighted number of base-attributable children ("federally-connected" children in Public Law 874) would be a district's entitlement. To determine local contribution per pupil, the Commission used its own per-pupil expenditure and local share figures (as reflected in the chart below). The Commission used the number of base-attributable children rather than the smaller number of base-connected children, though it applied the same weights that were assigned in Public Law 874.

The following chart shows how much of the burden was accounted for by the variables in the Public Law 874 formula in each of the four case studies:

A Comparison of Two Burdens:
The Burden Arrived At Using Most of the Variables
in the P.L. 874 Formula, and the Final Burden

	Local Contribution Per Child	Weighted # of B-A Children	Entitlement (million $) (col.1 x col.2)	Burden (million $)	Alternative Use Surplus (million $)
Bellevue	$1,170	4,819	$5.6	$6.3	$0.5
Douglas	843	1,957	1.6	1.5	0.0
Escambia Co.	297	5,242	1.6	0.7	0.3
Chambersburg	1,144	983	1.1	0.6	0.0

The local contribution per pupil is comparable to the LCR in Bellevue and Douglas; it is slightly higher in Chambersburg and substantially lower in Escambia County. The weighted number of base-attributable children is substantially higher for Chambersburg and Escambia County than the weighted number of base-connected children determined under the Public Law 874 formula. This is because the Commission includes the number of induced children in its count, and in Chambersburg and Escambia County the number of induced children is relatively high.

The weights used by the Commission in this chart are the same weights that the Public Law 874 formula uses to estimate entitlement. When the Commission-determined entitlement, plus consideration of alternative use, still does not equal the burden found by the Commission, it is because the weights assigned under Public Law 874 have not taken into account the contributions to commercial property tax revenue and miscellaneous "other" local revenue, nor have they considered residents' income in estimating residential property tax payments of base-attributable families. In Chambersburg and Escambia County, the weights assigned under Public Law 874 do not correspond with the Commission's estimates. The commercial property tax contributions of base-attributable families to these districts are substantial because in both districts there are a large number of civilian base employees who do all their shopping off-base and most of it within the district. In addition, miscellaneous "other" local revenues comprise a higher portion of locally-raised revenues in these districts than in the other two. Finally, the differences between the incomes of base employees and non-base employees in the area are particularly sharp in these two cases.

The chart confirms the point that the variables in the Public Law 874 formula explain the bulk of the Commission's results in most of the cases. The only variables that the Commission considers that are not taken into account by the formula are alternative use, commercial property taxes, and miscellaneous "other" local revenue.

The Role of Multipliers. A distinguishing feature of the economic impact model is its use of earnings and employment multipliers to estimate the induced effects of spending by base employees. The model incorporates multipliers to capture the secondary effects of the base on the area and, ultimately, the local educational agency. The induced effects are triggered by the spending of base employees: the commercial sector hires employees to accommodate this increased demand for goods and services, and these commercial sector employees are paid for their services. The newly-hired commercial employees spend part of their incomes on goods and services--purchases that in turn increase the demand for more employees in the commercial sector. The process continues until the initial money paid to base-connected employees has increased both the income and the number of employees in the area.

The model uses the earnings multiplier to determine the amount of income in the area that is attributable to base employees. This base-attributable income includes the personal income of base families and the income induced by the spending of these families. Base-attributable income is then used to determine the share of property tax revenue that is accounted for by base employees.

The employment multiplier is used to compute the total number of employees in the area that is attributable to base employees. The number of base-attributable employees includes the number of base employees, their working spouses, and the number of employees induced by the spending of base families. The number of schoolchildren associated with induced employees living in the district is then calculated and added to the number of base-connected children to find the total number of children that are in the district as a result of the base. The number of those base-attributable schoolchildren is then multiplied by per-pupil expenditure to determine the amount of local educational agency expenditures attributable to the base.

Multipliers are applied to the incomes of military and civilian employees, Non-Appropriated Fund personnel, and employed military dependents. The size of the multiplier applied to each category of employee is different because of the different spending pattern of each type of employee. The most important difference is between the spending patterns of military and civilian employees: civilian employees induce more income and employment in the area because they do more of their shopping in the local economy. Not as much military income circulates in the local economy because some of it is spent at commercial establishments on the base itself. Consequently, the civilian multipliers are larger than the military multipliers.

The Commission relied on a range of multipliers developed by the Bureau of Economic Analysis and applied it to each area. This range covered the gamut of possible multipliers that could apply to a community.[176] One exception to the Commission's use of the Bureau of Economic Analysis multipliers was Douglas School District, where the study's own data were used to calculate multipliers. Douglas was treated differently because the small size of the commercial sector in the district resulted in induced effects that were too small to have been captured by BEA studies.[177]

In the Commission model, the multipliers ultimately had very little net effect on the finances of a local educational agency: in fact, they offset each other. Though the sizes of multipliers for different types of employees differed, the employment and earnings multiplier applied by the model to each type of employee were of approximately the same size. This reflects the findings of the Bureau of Economic Analysis that the size of the multiplier effects on income and employees in an area were of comparable size.[178]

Employment and earnings multipliers of similar size meant that the percentage of base-attributable income that was induced was about the same as the percentage of base-attributable employees that were induced. Base-induced income resulted in increased property tax revenue for the local educational agency because part of that income was spent on housing and at commercial establishments in the district. However, the base-induced employees resulted in increased expenditures for the local educational agency because their schoolchildren imposed education costs.

176/ The Commission model used the earnings and employment multipliers developed by the Bureau of Economic Analysis (BEA), Department of Commerce, for application to military bases. BEA has achieved the capacity to determine military base multipliers for any county in the country. Earlier this year, the BEA methodology was adopted by the Department of Defense and domestic agencies as the standard approach for determining secondary impacts of defense realignments. These Federal agencies use the BEA methodology for economic adjustment purposes.

The Bureau charges $5,000 to compute regional impacts for each military base. The Commission chose to forego this expense and apply a range to each area.

177/ The Commission used data on retail sales in Box Elder and in the general area to compute its multipliers. The original calculations were made necessary by the fact that none of the establishments purchased any of their intermediate goods from other stores in the district. (The Commission verified its method with BEA.)

178/ Joseph Cartwright & Richard Beemiller, Bureau of Economic Analysis, The Regional Economic Impact of Military Base Spending 20 (Nov. 1979).

The multiplier effects of base employee spending, therefore, resulted in induced income and employment that ultimately affected both the revenues and expenditures of the local educational agency. Because the size of the earnings and employment multipliers were about the same, the model found that the base-induced effects on revenues and expenditures ultimately offset each other, resulting in little net impact on the finances of the local educational agency.

The Range of Results. The impact of each base is expressed as a range. The results for three of the case studies were within a range of $0.1 million, and in the fourth case, $0.2 million. The span results from the use of data that the study incorporated not as a single figure but as a range to encompass all conceivable possibilities. The data expressed as a range include the following:

1) Per-Pupil Expenditures. The model applied to each case study two estimates of per-pupil expenditure: the average of the comparable districts' per-pupil expenditure and the State average per-pupil expenditure. These figures were used to estimate what the agency's per-pupil expenditures would have been if it had not received Impact Aid nor had to pay for base-connected children.179/

179/ The Commission tested the sensitivity of the model to per-pupil expenditures by determining what per-pupil expenditure figure would have to be used in each case study to change the outcome of the base's impact from a burden to a benefit. In three of the four cases, the per-pupil expenditure figures that changed the outcomes were so deviant that no district in the State had per-pupil expenditures of that size. In the fourth case, only ten percent of the districts in the State had a per-pupil expenditure figure of that size.

The Commission also tried inserting the national average of per-pupil expenditures because it is the only other conceivable per-pupil expenditure figure that could reflect what a district really spends. The purpose was to see whether any legitimate figure that could have been used in the study would change the outcome that the burden of the base in three of four cases was commensurate with entitlement. The use of the national average of per-pupil expenditures--rather than State averages and the average of the five comparable districts--had only a slight effect on the outcome. The burden remained commensurate with entitlement. The range of comparability was slightly widened, however: using just comparable districts and State averages, the three burdens fell within a 21 percent range of entitlement; when the national average was also used, the burdens were all within 30 percent of entitlement.

The reason for the limited effect of the choice of the per-pupil expenditure figures--the average of the comparable districts, the State average, and the national average--on the results is that all the figures applicable to any district studied were within 21 percent of each other.

2) Multipliers. The model applied a range of earnings and employment multipliers, obtained from the Bureau of Economic Analysis, to several categories of base employees. A range was used to save the expense of contracting with the Bureau to determine multipliers for each district.

3) Alternative Use. The Commission requested that local planners and land-use experts make their projections of alternative use in the form of a range so that each could make his projections with as much confidence as possible and a consensus among them could more easily be achieved.

Summary. Even though the Commission conducted only four case studies and the evidence is far from conclusive with respect to all Federal activities, these studies do not support the assumption made by the Education Department that there are net economic benefits to localities from Federal activities. The results certainly indicate that policies ought not be made on the basis of that assumption.

The model developed by the Commission needs further testing and should be adapted so that the effects of other Federal activities on local educational agencies can be determined. Should the concepts used in the case study method prove to be valid indicators of Federal burden, an aggregate study model could be developed.

These instruments would provide empirical evidence about the burdens and benefits of Federal activities--making unsupported assumptions unnecessary and inappropriate in policy making.

For these reasons, the Commission recommends that the Education Department develop and use a model to measure the burden caused by Federal activities.

The following section of this chapter contains profiles of the four districts studied with the Commission's economic impact model, and a more intensive examination of the results.

1) Bellevue School District, Bellevue, Nebraska

Introduction

Bellevue School District is an independent, heavily impacted district. About two-thirds of the children enrolled in Bellevue schools are federally-connected.[180] Most of the federally-connected children live on Offutt Air Force Base and are "A" children, so that Bellevue qualifies as a "Super A" district. Since more than 50 percent of the enrollment consists of federally-connected children, Bellevue is eligible to apply for an increased entitlement under Section 3(d)(2)(B) of Public Law 874. Prior to fiscal year 1981, it had not done so.

Bellevue's Public Law 874 entitlement for fiscal year 1979 was $6.07 million, of which $6.04 million was accounted for by children connected with Offutt. Bellevue received $5.19 million in Public Law 874 funds that year.

The Area

Geography. The town of Bellevue, with a population of about 23,500, covers most of the northern part of the district and extends slightly beyond the northern border. The southern portion of the district is predominantly rural. Abutting the town of Bellevue to the south is Offutt Air Force Base, which lies entirely within the district.

The district is part of the Omaha, Nebraska metropolitan area, or Standard Metropolitan Statistical Area (SMSA).[181] Omaha is on the eastern border of Nebraska, separated from Iowa by the Missouri River. The metropolitan area encompasses three counties--Douglas and Sarpy Counties in Nebraska, and Pottawattamie County across the eastern border in Iowa. Offutt Air Force Base lies about ten miles south of downtown Omaha. Bellevue, which is in Sarpy County, is the third largest town in the Omaha metropolitan area. (*See* Maps 1, 2, and 3, *infra*.)

Transportation. Bellevue is bordered on the east by the Missouri River and lies just north of the Platte River and its confluence with the Missouri. Two interstate highways, Interstates 80 and 29, intersect in Omaha to the north; U.S. Highway 73-75 runs north and south, connecting

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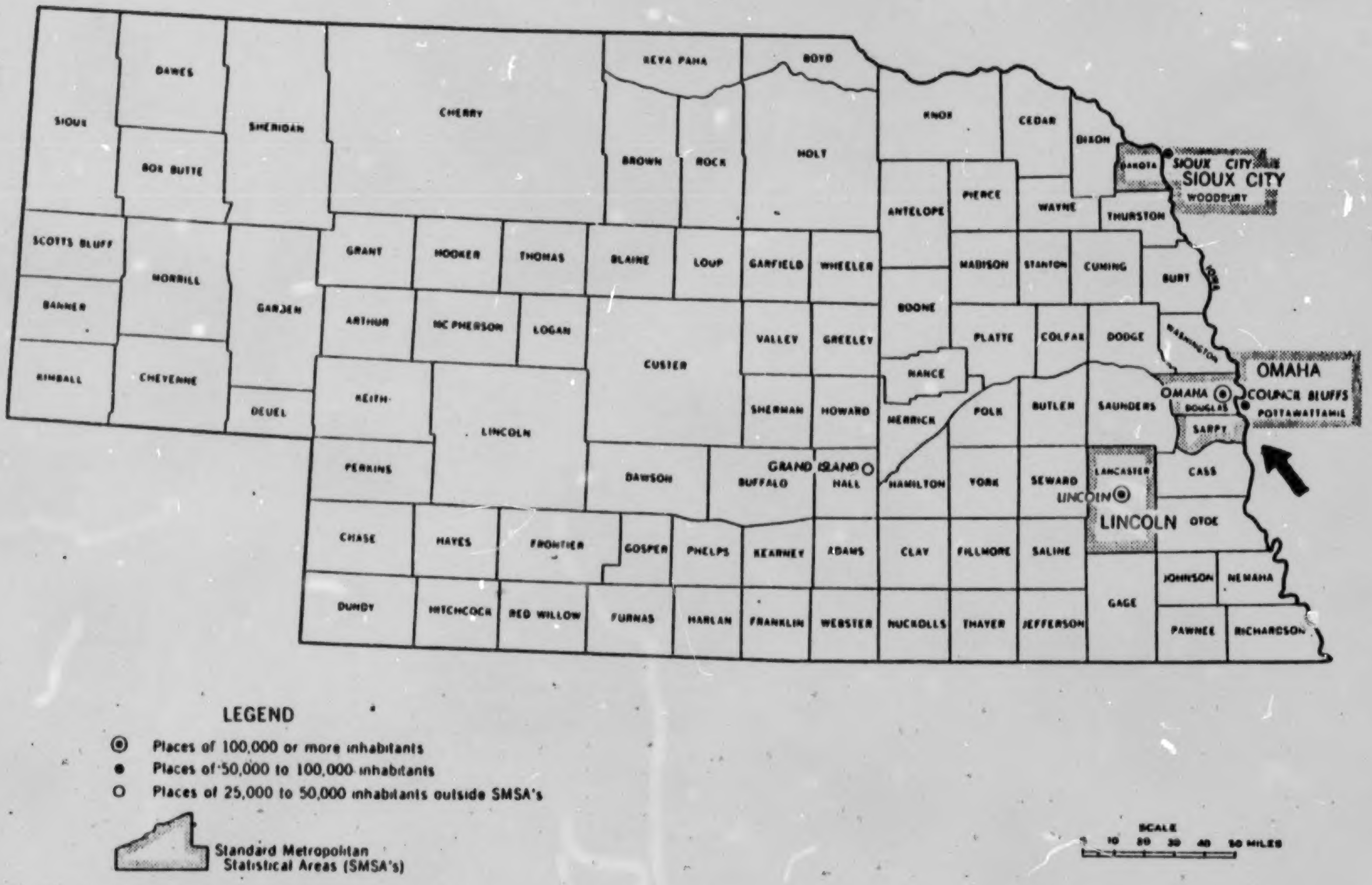
[180] "Federally-connected" children are those who live with parents either living on, working on, or both living and working on Federal property. There are two types of federally-connected children: an "A" child lives with a parent who both lives on and works on Federal property; a "B" child lives with a parent who either lives on or works on (but not both) Federal property. Federally-connected children include base-connected children as well as children whose parents live on, work on, or both live and work on Federal installations other than military bases.

[181] A Standard Metropolitan Statistical Area is a county (or a group of contiguous counties) in which there is a central city having a population of at least 50,000.

MAP 1

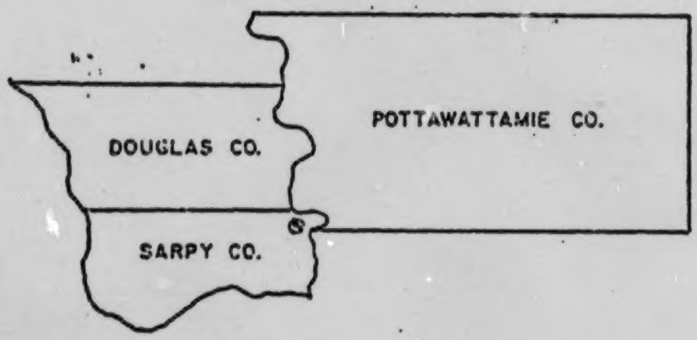
NEBRASKA


SIOUX
DAWES
SHERIDAN
CHERRY
KEYA PAHA
BOYD
KNOX
CEDAR
DIXON
DAKOTA
SIOUX CITY
SIOUX CITY
WOODBURY
BOX BUTTE
BROWN
ROCK
HOLT
ANTELOPE
PIERCE
WAYNE
THURSTON
SCOTTS BLUFF
MORRILL
GARDEN
GRANT
HOOKER
THOMAS
BLAINE
LOUP
GARFIELD
WHEELER
MADISON
STANTON
CUMING
BURT
IOWA
BANNER
ARTHUR
MC PHERSON
LOGAN
VALLEY
GREELEY
BOONE
PLATTE
COLFAX
DODGE
WASHINGTON
KIMBALL
CHEYENNE
DEUEL
KEITH
CUSTER
NANCE
OMAHA
OMAHA
COUNCIL BLUFFS
DOUGLAS
POTTAWATTAMIE
SHERMAN
HOWARD
MERRICK
POLK
BUTLER
SAUNDERS
SARPY
LINCOLN
PERKINS
DAWSON
GRAND ISLAND
BUFFALO
HALL
HAMILTON
YORK
SEWARD
LANCASTER
LINCOLN
LINCOLN
CASS
OTOE
CHASE
HAYES
FRONTIER
GOSPER
PHELPS
KEARNEY
ADAMS
CLAY
FILLMORE
SALINE
GAGE
JOHNSON
NEMAHA
DUNDY
HITCHCOCK
RED WILLOW
FURNAS
HARLAN
FRANKLIN
WEBSTER
NUCKOLLS
THAYER
JEFFERSON
PAWNEE
RICHARDSON
LEGEND
◉ Places of 100,000 or more inhabitants
● Places of 50,000 to 100,000 inhabitants
○ Places of 25,000 to 50,000 inhabitants outside SMSA's
Standard Metropolitan Statistical Areas (SMSA's)
SCALE
0 10 20 30 40 50 MILES

U.S. Department of Commerce
BUREAU OF THE CENSUS

Map 2

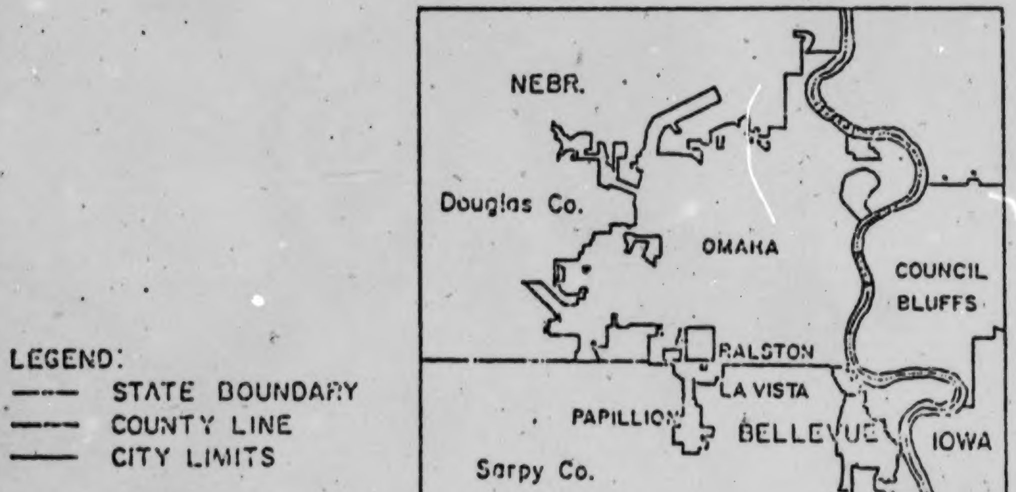
STANDARD METROPOLITAN STATISTICAL AREA


POTTAWATTAMIE CO.
DOUGLAS CO.
SARPY CO.

SOURCE: BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE

CITY OF BELLEVUE
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

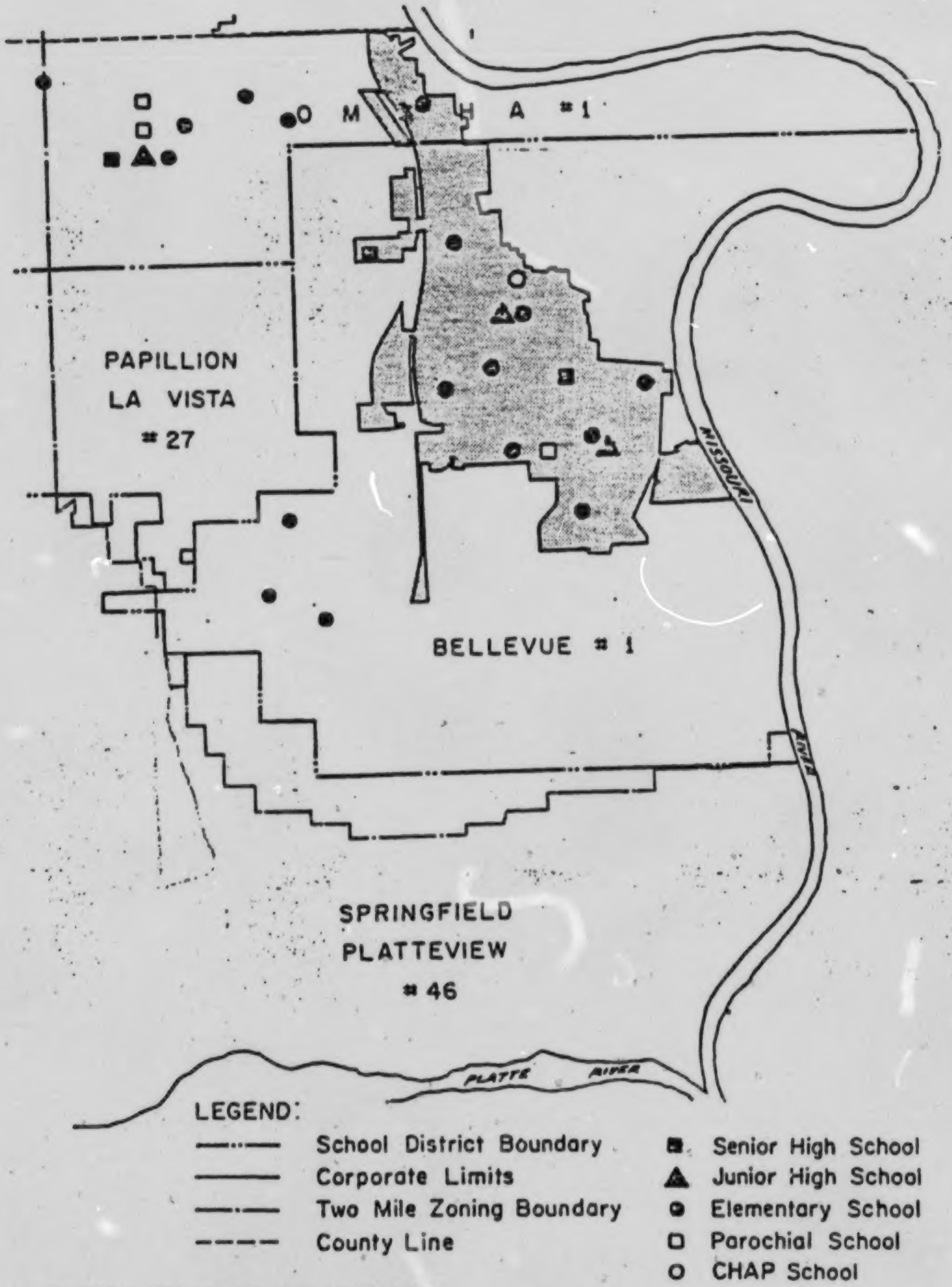
RELATIVE TO METROPOLITAN AREA


NEBR.
Douglas Co.
OMAHA
COUNCIL BLUFFS
RALSTON
LA VISTA
PAPILLION
BELLEVUE
IOWA
Sarpy Co.
OFFUTT AFB
LEGEND:
STATE BOUNDARY
COUNTY LINE
CITY LIMITS

CITY OF BELLEVUE
DEPARTMENT OF PLANNING AND
COMMUNITY DEVELOPMENT

Map 3

SCHOOLS AND DISTRICT BOUNDARIES

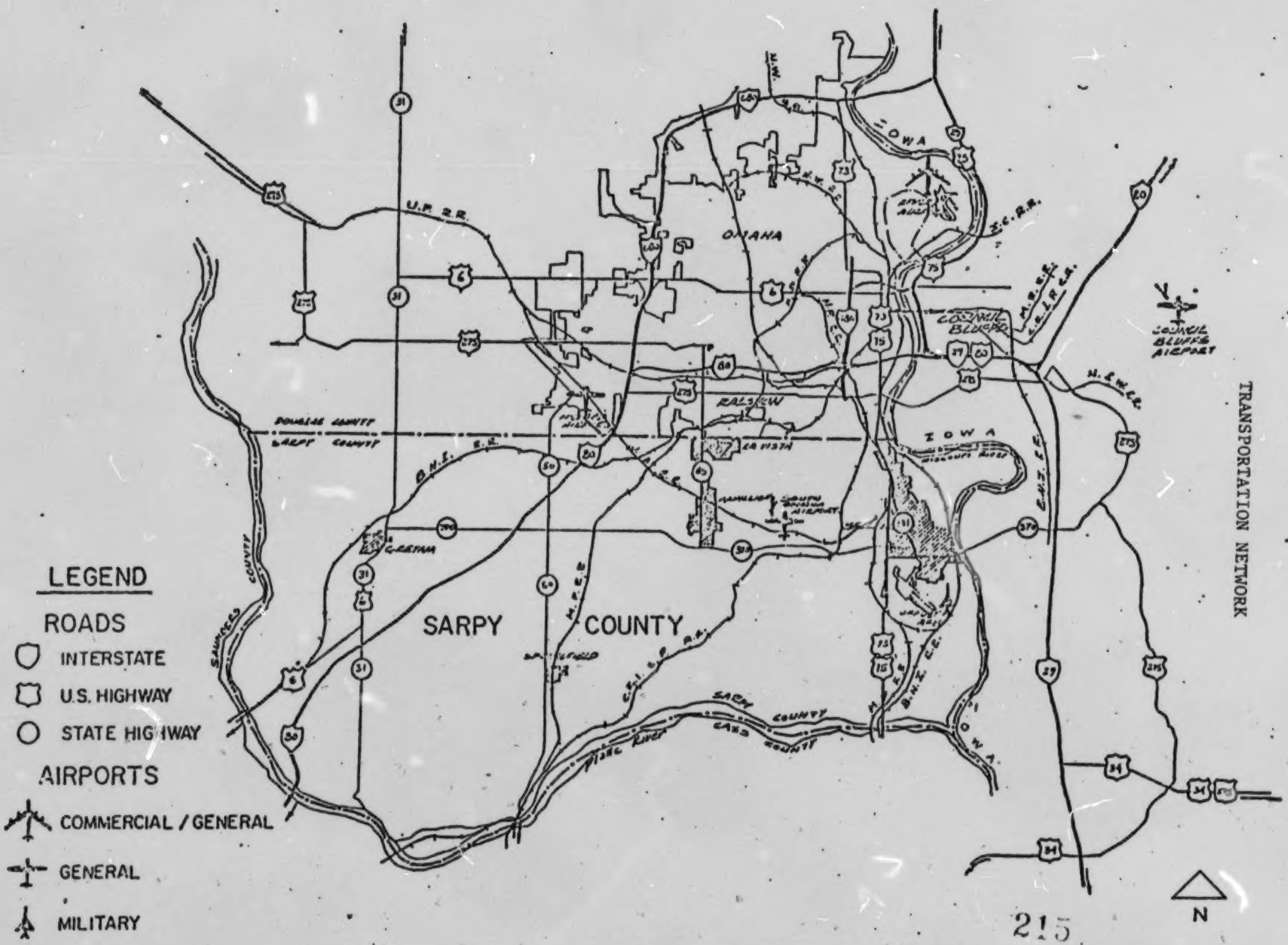

O M A H A #1
PAPILLION LA VISTA #27
BELLEVUE #1
SPRINGFIELD PLATTEVIEW #46
MISSOURI RIVER
PLATTE RIVER
LEGEND:
School District Boundary
Corporate Limits
Two Mile Zoning Boundary
County Line
Senior High School
Junior High School
Elementary School
Parochial School
CHAP School

SOURCE : BELLEVUE PUBLIC SCHOOLS
OMAHA PUBLIC SCHOOLS

CITY OF BELLEVUE
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MAP 4.

TRANSPORTATION NETWORK


LEGEND
ROADS
INTERSTATE
U.S. HIGHWAY
STATE HIGHWAY
AIRPORTS
COMMERCIAL / GENERAL
GENERAL
MILITARY
SARPY COUNTY
OMAHA
IOWA
COUNCIL BLUFFS
COUNCIL BLUFFS AIRPORT
RALSTON
DOUGLAS COUNTY
SARPY COUNTY
GRETNA
SPRINGFIELD
PLATTE RIVER
SARPY COUNTY
CASS COUNTY
SAUNDERS COUNTY
U.P. R.R.
B.N.I. R.R.
M.P.R.R.
I.C. R.R.
C.&N.W. R.R.
C.R.I.&P. R.R.
N

Offutt Air Force Base, Bellevue and Omaha. State Highway 370, the only State highway running east and west through Sarpy County, runs through downtown Bellevue north of the base. (See Map 4, supra.)

The metropolitan area, served by nine railroads, is the fourth largest rail center in the nation. Burlington Northern, the longest railroad system in the United States, passes within one half mile of Offutt to the east and runs along the eastern border of the city of Bellevue. The Missouri Pacific Railroad, which connects Canada and Mexico, runs along the western portion of the base crossing through northwest Bellevue.

The closest commercial general aviation facility is Eppley Airfield, which is owned by the Omaha Airport Authority. It is located northeast of downtown Omaha near the Missouri River.

The Economy. Tables I and II provide an overview of demographic and economic developments in Bellevue and the surrounding area:

TABLE I

Economic Development, Omaha Area and U.S.
Total Population and Employees By Sector, 1950-78
(numbers in thousands)

POPULATION	1950	1960	1970	1978	Percent Change, Earliest-Most Recent Year
Bellevue	3.9	8.8	19.4	23.5	502.06
Omaha SMSA	366.4	457.9	540.1	581.7	58.8
U.S.	151,325.8	179,323.2	204,335.0	218,717.0	44.5
MANUFACTURING	1954	1963	1972	1977	
Bellevue	NA	NA	NA	NA	NA
Omaha SMSA	30.6	35.1	38.0	34.7	13.4
U.S.	16,125.6	16,958.4	19,026.8	19,596.9	21.5
RETAIL*	1954	1963	1972	1977	
Bellevue	0.1	0.3	2.2	2.4	2,300.0
Omaha SMSA	26.0	28.6	39.9	44.8	72.3
U.S.	8,845.9	10,118.1	12,990.4	14,895.2	68.4
SERVICES*	1948	1958	1967	1977	
Bellevue	0.0	0.2	0.4	0.4	†
Omaha SMSA	5.8	11.8	14.8	26.0	348.3
U.S.	1,902.1	3,864.5	5,029.0	8,172.0	329.6
AGRICULTURAL*	1950	1959	1969	1974	
Bellevue	NA	NA	NA	NA	NA
Omaha SMSA	6.8	5.5	3.9	3.3	51.5
U.S.	6,966.2	5,294.7	3,384.6	3,026.7	56.6

* Employment in these sectors is the sum of the number of establishments and the number of employees. It is assumed that there is one proprietor per establishment. (Proprietors are excluded from the data on employees.)

† Rounding of numbers precludes meaningful calculation.

NA Not Available.

Source: U.S. Census

TABLE II

Employees by Sector as Percent of Total Employees,†
Omaha Area and U.S.
(figures in parentheses indicate latest year
for which data are available)

	*AG (74)	MANU (77)	*RET (77)	*SERV (77)	TOTAL
Bellevue	NA	NA	NA	NA	NA
Omaha	3.0	31.9	41.2	23.9	100.0
U.S.	6.6	42.9	32.9	17.9	100.0

† Total employees is the sum of employees in each sector for the latest year for which data are available.

* Employment in these sectors is the sum of the number of establishments and the number of employees. It is assumed that there is one proprietor per establishment. (Proprietors are excluded from the data on employees.)

Source: U.S. Census

These data reflect the following developments:

- Bellevue's rate of population growth is running far ahead of the national and Omaha metropolitan area averages. Bellevue's population has increased five-fold over the last three decades, while the population in the Omaha area has increased by 59 percent and the United States population has grown by 45 percent.

- The number of Omaha employees in the service and retail sectors is increasing at a rate faster than the national average, while the number in manufacturing has recently decreased.

- Employment in Omaha is distributed fairly evenly among the manufacturing, retail, and service sectors. A small percentage of the labor force is employed in agriculture.

The School District

For the last two decades, federally-connected children have constituted a high proportion of the overall student population. As the following table shows, federally-connected children have constituted at least two-thirds of the enrollment in the district since 1960.

Number of Total and Federally-Connected Children,
Bellevue School District, 1960-1979

	1960	1970	1979
Total ADA*	3,283	10,421	9,191
Federally-connected ADA	2,374	8,038	6,073

* Average daily attendance.

Source: SAFA.

Bellevue School District had an enrollment of 9,191 pupils in fiscal year 1979, of whom 6,073, or 66 percent, were federally-connected. Of these federally-connected children, 6,005, or 99 percent, were connected with Offut Air Force Base. Of the federally-connected children, 3,256 were "A" children, the children of military parents living on base. Since the number of "A" children constituted 35 percent of the overall enrollment, the district exceeded the 20 percent requirement for qualification as a "Super A" district.

The "B" children, whose parents worked but did not live on Federal property, numbered 2,817, or 31 percent of the enrollment. Of these "B" children, 2,749, or 98 percent, were connected with Offut Base. About 80 percent of these "B" pupils were the children of military parents.

The composition of Bellevue's base-connected[182/] student population in fiscal year 1979 is reflected in the following table:

Composition of Base-Connected Children,
Bellevue School District, FY 1979

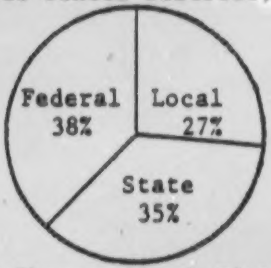
Total ADA	9,191
Federally-connected ADA	6,005
"A" Children	3,256
Military "B" Children	2,259
Civilian "B" Children	490

Source: SAFA

With such a high proportion of base-connected children, the Bellevue district is heavily dependent on Federal revenue for the maintenance and operation of its schools. Impact Aid provided $5.2 million in fiscal year 1979--36 percent of the local educational agency's general revenue. This funding was 15 percent less than Bellevue's entitlement, which was $6.07 million in fiscal year 1979. Federal categorical aid added another $0.3 million. State and local revenues provided the remainder of the revenue in roughly equal proportions. The State contribution was $5.1 million, or 35 percent of total revenue, while Bellevue raised $4.0 million, or 27 percent of its revenues from local sources. This relationship is shown in the following chart:

[182/] "Base-connected" children are those who live with parents either living on, working on, or both living and working on a military base. There are two types of base-connected children: an "A" child lives with a parent who both lives and works on a military base; a "B" child lives with a parent who either lives or works (but not both) on a military base. Base-connected children do not include those federally-connected children whose parents live, work, or live and work on Federal installations other than military bases.

Sources of Education Revenue,
Bellevue School District, 1978-79



Source: Bellevue School District

Bellevue raised virtually all of its local revenue from the property tax. About 89 percent of these revenues derived from real property sources such as land and buildings. Bellevue also taxes personal property. Revenues from these sources provided 11 percent of Bellevue's property tax returns.

Bellevue's average per-pupil assessed valuation has historically been among the lowest in Nebraska. Bellevue's assessed valuation per pupil of $8,836 in 1979 was the second lowest of the 297 unified districts in Nebraska. The average assessed valuation per pupil of $30,669 in Nebraska was 247 percent higher than Bellevue's, according to the Nebraska State Department of Education.

Bellevue's mill rate was 42.59 mills in fiscal year 1979, a rate less than the median mill rate in the State, which was 47.61 mills.

The Base

The vast majority of Bellevue's 14,105 employees--about 90 percent of them--are military. The base payroll was nearly $300 million in 1979.

The number of base employees has grown steadily over the last two decades, fueled largely by increases in the number of military employees. The following table reveals this trend:

Number of Employees at Offutt Air Force Base, 1960-79*

	1960	1970	1979
Total	9,573	13,408	14,165
Military	8,347	11,632	11,726
Civilian	1,226	1,776	2,439

* These figures do not include contractors or Non-Appropriated Fund employees.

Source: Department of Defense

Virtually all Offutt employees lived in the Omaha metropolitan area. Of the 14,165 employees, 5,006 lived on base, either in barracks, family housing, or mobile homes. Another 3,913 employees lived off base in the Bellevue School District. Of the employees living in the school district, 72 percent were military. The average salary for both military and civilian employees was $15,000 in 1979. This exceeded the average salary for non-base employees in the SMSA, which was $11,000.

There are a number of commercial establishments on base, including the PX, commissary, clubs, and liquor stores. On-base sales totaled $53 million in 1979, which was 43 percent of the total retail sales in Bellevue.

Results of the Economic Impact Study for Bellevue School District

The following table summarizes the results of the economic impact study for the Bellevue School District.*/

Expenditures

	Per-Pupil Expenditures	Base-Attributable (millions $)	Alternative Use (millions $)
Comparable districts	$1,769	$10.8-$11.0	$2.7-$2.8
State Average	$1,775	$10.8-$11.1	$2.7-$2.8

Revenues

Source		
Property taxes	$1.0-$1.1	$2.9-$3.1
State aid	$3.7-$3.8	$0.2-$0.1
Miscellaneous "other" local revenues	$0.4-$0.4	$0.1-$0.2
Total	$5.1-$5.3	$3.2-$3.4

Burden

Net Burden = (Current burden - Alternative use burden)
= (Current expenditures - Current revenues)
- (Alternative use expenditures - Alternative use revenues)

	Lower Bound (millions $)	Upper Bound (millions $)
Comparable PPE:	(10.8-5.1) - (2.7-3.2) $6.2	(11.0-5.3) - (2.8-3.4) $6.3
State avg. PPE:	(10.8-5.1) - (2.7-3.2) $6.2	(11.1-5.3) - (2.8-3.4) $6.4

Entitlement accounted for by Offutt Air Force Base = $6.0 million.

* Figures rounded for clarity. Those used in text are the midpoints.

The study found that Offutt Air Force Base imposed a fiscal burden on Bellevue of between $6.2-$6.4 million in 1979. Bellevue's Public Law 874 entitlement was $6.0 million that year as a result of pupils connected with Offutt. The midpoint of the burden estimated by the Commission's study, therefore, was within five percent of Bellevue's Public Law 874 entitlement.

Offutt imposed a burden primarily because its employees did not generate enough revenues to cover the costs of educating their children. In particular, the employees failed to contribute as much property tax revenue as non-Federal employees paid. Families attributable to Offutt contributed as much to the other sources of revenue--particularly State aid and miscellaneous "other" local revenue--as families not associated with the base.

In addition, approximately $0.5 million of Offutt's burden, or ten percent, resulted from the determination that Bellevue would have received a fiscal surplus from alternative use of the site, given the same assessed valuation practices, mill rate, State aid formula, and per-pupil expenditures that are in effect today. The agency would have benefited from alternative use because a large portion of the site would have been used for industrial purposes. (See Attachment II, infra.) Bellevue has had to forego that revenue surplus as a result of the presence of Offutt Base and, the study found, has suffered a fiscal burden as a result.

Bellevue financed 6,168 pupils attributable to Offutt at a cost of $1,772 per pupil. Thus, pupils associated with Offutt imposed costs of $10.9 million on the local educational agency in 1979.

The employees associated with the base, however, contributed only $1.04 million in property tax revenue--nine percent of the costs of educating their schoolchildren. They paid another $0.4 million in miscellaneous "other" local revenue, which included interest earned on investments, fines and license fees. Together, the local tax contributions of base-attributable[183] employees covered 13 percent of the costs they imposed. In districts throughout Nebraska, in contrast, local revenues comprised 74 percent of total revenues, a difference of 61 percentage points.

Base-attributable employees in Bellevue contributed substantially less property tax revenue per pupil than did other employees in the district.

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[183] "Base-attributable" refers to the sum of "base-connected" and "base-induced," and applies to employees, their schoolchildren, their incomes, and their families. It also applies to expenditures and to revenues of the local educational agency that have been accounted for by base-attributable families. "Base-induced" refers to those employees (as well as to their schoolchildren and income) in the commercial sector who were hired to accommodate the spending of base employees.

Base-attributable employees contributed $1.04 million in property tax revenue and were responsible for 6,168 children in the Bellevue district in 1979. Their per-pupil property tax amounted to $169. Other residents in the district paid $2.3 million in property taxes and accounted for 3,023 children, a per-pupil property tax contribution of $764. The per-pupil property tax contributions of non-base-attributable families were 4.5 times higher than the contributions of base-attributable families.

The property tax shortfall attributable to Offutt occurred chiefly because the places of employment, residence, and shopping for many of its employees were tax-exempt. Of the 14,487 employees (including contractors) who worked at the base, 5,006 actually lived on base or in tax-exempt mobile homes and paid no property taxes on their residences. Another 4,235 employees lived off base in the Bellevue School District.

Furthermore, 70 percent of the employees living in the district were military employees with shopping privileges at the commercial establishments on base. The $53.4 million in sales of Offutt establishments was equal to 43 percent of the sales of establishments in the town of Bellevue. These on-base establishments, like the rest of the base, are tax-exempt.

Finally, the Soldiers and Sailors Relief Act exempts military employees who declare residency out of State from paying personal property taxes in Nebraska on automobiles, recreation vehicles, and mobile homes. Because military employees have the option of declaring residency in States without personal property (or income) taxes, very few Offutt employees actually paid personal property taxes in 1979.

State aid per pupil was higher to Bellevue than to the rest of the State: Bellevue received $555 per pupil in State aid, compared with $341 per pupil in other local educational agencies throughout Nebraska. Nebraska's formula increases aid as the assessed valuation per pupil in a district decreases: the assessed valuation per pupil in Bellevue was $8,836 in 1979, substantially below the State average of $30,669.

The amount of State aid to Bellevue that was triggered by base-attributable families was even higher than that accounted for by non-base families in the District. The study determined that the assessed valuation per pupil accounted for by base-attributable families was $4,106--a figure substantially lower than that associated with other families in the district because the places of employment and frequently residence and shopping of these families were tax-exempt and therefore not assessed. By inserting into the State formula the number of base-attributable pupils and the assessed valuation associated with base-attributable employees' residences, shopping, and places of employment, the study determined that base-attributable families accounted for $3.8 million in State aid. Because 6,168 base-attributable children attended school in the district, the amount of State aid per pupil triggered by these families amounted to $613--$175 more than the average of non-base-attributable families, which was $438.

The following table compares the per-pupil revenue contributions of base-attributable families and other families in Bellevue:

Per-Pupil Revenue Contributed by Base-Attributable and
Non-Base-Attributable Families, by Source, FY 1979

	Base-Attrib.	Non-Base-Attrib.
Property Tax Revenue/ADA	$169	$ 764
State Aid/ADA	$613	$ 438
Misc. "Other" Local Revenue/ADA	$ 67	$ 67
Total	$849	$1,269

The table shows that the additional State aid triggered by base-attributable families was substantially less than the shortfall in their property tax contributions. Thus, the burden found by the study appears to be the result of the failure of base-attributable families to contribute as high a share of property tax revenue as did other families in the district.

The correspondence between the Commission's finding of a $6.3 million burden and the Public Law 874 entitlement of $6.0 million for Bellevue stems chiefly from two factors:

- The data used by the Commission and applied by the Public Law 874 formula proved to be similar. The local contribution per pupil ("local contribution rate," or LCR) figures were approximately the same because discrepancies between data used to compute the figures--per-pupil expenditure and local share of expenditures--were minor. In addition, the figures for weighted number of pupils were similar because the size of the commercial property tax contributions and miscellaneous "other" local revenues conferred by base-attributable families--a consideration that was taken into account by the Commission model but not by the Public Law 874 formula--was very small.

- The Public Law 874 formula captured virtually all the patterns of Federal impact that the Commission found applied to Bellevue School District. The Commission found that insertion of its data into the Public Law 874 formula resulted in an estimate of entitlement within ten percent of the Commission's final determination of burden. The variables in the formula therefore explained most of the burden found by the Commission.

The Public Law 874 formula determines entitlement by multiplying the local contribution rate (LCR) by a weighted number of federally-connected children in the various categories for which provision is made in the law. Bellevue's local contribution rate in 1979 was $1,273--arrived at under the Public Law 874 formula by multiplying the per-pupil expenditure of Bellevue's comparable districts by the local share of current expenses in those districts. The Commission found that insertion of its own data into the Public Law 874 formula resulted in a local contribution of $1,170 per pupil.

The following table shows how the local contribution rate for Bellevue was determined under current law and what that rate would have been if the study's data were used:

Local Contribution Per Pupil and LCR, Determined Using Commission Data and P.L. 874 Data, Respectively

	Per-Pupil Expenditure	Local Share	Local Contribution Per Pupil/LCR (PPE x Local Share)
Commission[*]	$1,772	0.66[†]	$1,170
P.L. 874	$1,568[+]	0.81	$1,273

[*] The Commission figures represent the midpoint in the range of data determined and used by the study.

[+] Bellevue determined its per-pupil expenditure under Public Law 874 by taking the weighted average of the per-pupil expenditures for 1977 in five comparable districts approved by the Office of Education.

[†] Study's determination of non-State share of costs of base-attributable pupils.

The Commission's determination of local contribution per-pupil differed by less than ten percent from the local contribution rate under Public Law 874. The reason, in effect, was that the discrepancies between the data applied by the Public Law 874 formula and the data used by the Commission offset each other. The per-pupil expenditure used by the Commission was higher than that applied by the Public Law 874 formula, while the Commission's local share of these expenditures was lower than the Public Law 874 figures.

The per-pupil expenditure figure used by the Commission was higher than that used under Public Law 874 because the Commission's data were more current. The Commission used fiscal year 1979 data from Bellevue's comparable districts and from the State to estimate Federal impact in fiscal year 1979; the Public Law 874 formula, meanwhile, applied per-pupil expenditure figures from fiscal year 1977 to estimate Bellevue's entitlement for fiscal year 1979. This two-year-old data did not reflect the cost increases that occurred between 1977 and 1979.

On the other hand, the Commission's estimate of the local share of current expenditures--which amounted to 66 percent of total expenditures--was lower than the determination of local share made under the Public Law 874 formula. The discrepancy resulted from the different approaches: the Commission estimated the local share of Bellevue's current expenditures for base-attributable children within the district; the Public Law 874 formula applied the local share of current expenditures for all children in Bellevue's comparable districts. The State share of current expenditures was higher (and the local share lower) for base-attributable pupils in Bellevue than it was for the children in the comparable districts. The State formula in Nebraska increases aid as the per-pupil assessed valuation in a district decreases; because the assessed valuation per pupil associated with base-attributable families in Bellevue was lower than it was for families in the comparable districts, they triggered more State aid. The assessed valuation per pupil associated with Bellevue's base-attributable families was $4,106--substantially lower than the $29,874 for families in the comparable districts. Base-attributable families were associated with a lower per-pupil assessed valuation because their families work and frequently live at Federal facilities that are tax-exempt and therefore not assessed at all.

The Commission estimated the local share by first determining the current expenditures imposed by base-attributable children and the State revenue triggered by base-attributable families. The Commission then divided the difference between the two figures by base-attributable current expenditures to arrive at local share. [Local Share = (Expenditures, Base-Attributable - State Revenue, Base-Attributable) ÷ Expenditures, Base-Attributable].

Consequently, the Commission's higher per-pupil expenditure figure and lower local share nearly offset each other in yielding a local contribution per pupil that was within ten percent of the local contribution rate applied by Public Law 874 to Bellevue.

The Public Law 874 formula determines entitlement by multiplying the local contribution rate by the weighted number of federally-connected children. The weights assigned to each child differ on the basis of the statute's estimate of the relative property tax burden imposed by each child's family.[184/]

[184/] Children of military parents living on base are assigned a weight of 1.0 according to the rationale that their parents contribute no property taxes to the local educational agency; children of military parents living off base, on the other hand, are assigned a weight of 0.5 on the ground that their parents pay property taxes on their residence, which are assumed to account for 50 percent of all property tax revenues. Other weights are assigned to pupils who are the children of civilian employees, and their weights differ according to whether their parents live in or out of the county. Finally, still other weights are assigned to those children participating in special education programs. The Commission assigned induced children a weight of 0.45, the same weight that is given by Public Law 874 to children of civilian employees who work in the county.

The Commission considers these property tax contributions from base-attributable families but also takes into account their contributions to commercial property tax revenues and local non-property tax revenues. If the Commission model were to incorporate these revenue contributions into the Public Law 874 formula, the effect would be to lower the weight applied by Public Law 874 to measure burden..

To determine how well the variables in the Public Law 874 formula captured Federal impact as measured by the Commission model, the Commission estimated entitlement by inserting its own data into the Public Law 874 formula. The two inserted variables--somewhat different from those actually applied to Bellevue by the formula--were the Commission's determination of the local contribution per base-attributable child and the number of base-attributable children using the weights assigned to these children by Public Law 874. In determining the number of children, the Commission included base-induced[185] children in the district as well as children directly connected to the base. The Commission incorporated induced employees and their schoolchildren into all calculations of base effects on expenditures and revenues.

A comparison of the determinations of entitlement using Commission data and data provided under Public Law 874 yields the following results:

Entitlement, Determined with P.L. 874 Data and
Commission Data (Using P.L. 874 Weights)

Public Law 874		Commission	
Local Contribution Rate	$1,273	Local Contribution Per Base-Attributable Child	$1,170
Weighted Number of x Base-Connected Children	4,746	Weighted Number of x Base-Attributable Children	4,819
= Entitlement	$6.0 million	= Entitlement	$5.6 million

This $5.6 million figure--reached by inserting Commission data into the Public Law 874 formula--is 11 percent below the Commission's final result of a $6.3 million burden. This closeness suggests that the Public Law 874 formula captured most of the same dynamics of Federal impact that the Commission found were taking place in Bellevue.

The $0.7 million difference is mostly the result of the budget surplus of $0.5 million that would have accrued if the site were to have been used by the private sector and taxed at the current mill rate. The Public Law 874 formula does not take into account alternative use of the base site. The Commission model treated this surplus as an increased burden because the local educational agency could have been that much better off if the base had not been established. The remainder of the difference between the entitlement determined with Commission data and the Commission's burden resulted from the Commission's consideration of the contribution to commercial property taxes and miscellaneous "other" local revenues of base-attributable employees.

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[185] *See* note 183, *supra*, regarding the term "base-induced."

The Commission's determination of burden was commensurate with Bellevue's entitlement under the Public Law 874 formula because data used by the Commission's study proved to be comparable with data applied in the Public Law 874 formula, and because the variables in the formula captured most of the Federal impact. The Commission's results showed that the data on per-pupil local contribution that was used in the Public Law 874 formula was within ten percent of the data arrived at by the Commission. The results also suggested that the variables in the formula itself explained about 90 percent of the impact of Offutt Air Force Base on Bellevue. The remainder of the Commission's result was explained chiefly by the alternative use surplus, which was not taken into account by the Public Law 874 formula.

Results of Alternative Use, Bellevue

The study reckons that Bellevue would have received a budget surplus under alternative use of the site now occupied by Offutt Air Force Base. The revenues contributed by the site would have exceeded the expenditures required for schoolchildren associated with it by $0.5 million. Virtually all the revenue would have been provided by the property tax.

The surplus would have resulted from the heavily industrial use of the site: 50-60 percent of the developed land would have been used for industrial purposes. (See Attachment II, infra.) While Bellevue would have received substantial tax payments from the industrial firms, the costs of educating the children of these industrial employees would have been relatively small. Commuting patterns of civilian employees at Offutt suggest that only 40 percent of the industrial employees would have lived in Bellevue School District. The firms on the site would have paid property taxes, but because relatively few of the employees would have lived in the district, the number of children attending schools in Bellevue School District would have been relatively small. The result would have been an assessed valuation per pupil of $45,185 asociated with the site--a figure 47 percent higher than the current State average.

The amount of expenditures under alternative use would have been substantially smaller than they are now because the number of children associated with the site would have dropped from 6,168 to 1,535. This decrease would have occurred for two reasons: the number of employees working on the site under alternative use would have declined, as would have the number of schoolchildren associated with these employees. Offutt employed 14,487 people in 1979, 81 percent of whom were military; under alternative use, the industrial and commercial establishments that have comprised .75-80 percent of the usable land would have employed 6,693 people--or only 46 percent of the employees at Offutt. The other reason is that the number of schoolchildren per family would have decreased. At Offutt there were 6,005 pupils connected with the 9,103 employees living on base and in the school district in 1979, a ratio of 0.66 that reflected the large number of military employees who had families. Among residents of the Omaha metropolitan area, the ratio of pupils to employees was only 0.41, which is the figure that the model used in determining the number of schoolchildren under alternative use.

Most revenues would have come in the form of property taxes from the site itself. More than half the property tax revenue would have originated from industrial uses. One-fourth of the revenue would have derived from commercial sources, which would have occupied 20-25 percent of the site. The remainder would have come primarily from residences on the site.

The State would have provided only $0.1-$0.2 million to Bellevue on the basis of the site alone. The State formula decreases aid as per-pupil assessed valuation increases. The assessed value per-pupil of the site would have increased to $45,185, which would have had the effect of increasing the entire district's assessed valuation per pupil from $8,836 to $27,478. The assessed vaulation per pupil in the State of Nebraska was $30,669 in 1979.

The remaining $0.1-0.2 million in revenues from employees and residents associated with the site resulted from their payment of miscellaneous local fees and charges and their contributions to the interest earned on investments.

ATTACHMENT I

STATISTICAL PROFILE, BELLEVUE SCHOOL DISTRICT, FY 1979

Summary

I. School District

Average Daily Attendance (ADA)

Total	9,191
Base	6,005
Military A	3,256
Military B	2,259
Civilian B	490

Base Employees

Total	14,487
Military, total	11,706
Living in district, on base	4,868
Living in district, off base	2,948
Civilian, total	2,761
Living in district	1,287

Acres

Acres, district	14,160
Acres, base	2,656

II. Local Educational Agency

Per-pupil expenditure, average of comparable districts	$ 1,769
Per-pupil expenditure, State average	$ 1,775
Total Property Tax Revenue	$3,350,000
Residential sources	$2,242,000
Commercial sources	$ 507,000
Industrial & agricultural sources	$ 601,000
Total General Fund State Aid	$5,103,000
Miscellaneous "Other" Local Revenue	$ 615,000
P.L. 874 Entitlement, Offut Air Force Base	$6,040,000
P.L. 874 Payment	$5,185,000

Current Use

I. Current Expenditures

Average personal income	$15,200
ADA/Job	0.414
Per-pupil expenditure, comparable districts	$1,769
Per-pupil expenditure, State average	$1,775
ADA, base	6,005

II. Current Revenues

TYPE OF EMPLOYEE	NUMBER		AVG. WAGES & SALARIES	
	living in district	SMSA (excl. district)	living in district	SMSA (excl. district)
Civil service	648	987	$17,617	$22,038
Non-Appropriated Fund employees (NAF)	317	487	$ 8,000	$ 8,000
Contractors	322	0	$11,386	*
Working spouses	222	225	$11,386	$11,386
Military off base	2,798	3,910	$14,518	$13,387
Working spouses	1,167	1,693	$11,386	$11,386
Military on base	4,868	0	$16,377	*
Military living in mobile homes	150	0	$14,518	*
Working spouses	2,331	0	$11,386	*

* Not applicable

Personal Income Adjustment, base employees (except NAF)	1.18
Personal Income Adjustment, NAF employees	1.09

Net Multipliers

Civil service employees	.24 - .40
Spouses, civil service employees	.00 - .40
NAF employees	.23 - .37
Military employees	.17 - .33
Spouses, military employees	.00 - .33

a. Residential Property Tax Revenue ($2,242,000)

Population, SMSA, 1978	581,700
Enrollment, district, 1977	10,082
Enrollment, SMSA, 1977	136,402
Per capita personal income, SMSA	$8,489
ADA, non-base-connected families	3,186
ADA, low-rent public housing	0

b. Commercial Property Tax Revenue ($507,000)

Percentage of personal income spent on retail goods and taxable services	59.3%
Military payroll, employees living on base and in SMSA	$ 171,811,000
Income of retirees living in SMSA	$ 33,523,000
Total on-base sales	$ 53,430,000
Total retail sales & taxable services receipts in Bellevue	$ 123,013,000
Total retail sales & taxable services receipts in SMSA	$3,022,430,400

c. General Fund State Aid ($5,103,000)

Non-categorical aid	$4,093,000
Categorical aid & miscellaneous "other" aid	$1,010,000

d. Miscellaneous "Other" Local Revenues (Non-Property Tax Revenues) ($615,000)

Total ADA, district	9,191
Miscellaneous "other" local revenue, function of ADA	$354,000
Miscellaneous "other" local revenue, function of local educational agency revenues (Interest income)	$261,000

Alternative Use

III. Alternative Use Expenditures

Average personal income	$15,200
ADA/Job	0.414
Per-pupil expenditure, comparable districts	$ 1,769
Per-pupil expenditure, State average	$ 1,775

IV. Alternative Use Revenues

	No. Acres	% Land Used	Avg. Tax Per Acre	Emp. Per Acre	Avg. W&S
Industrial	952-1,141	0.5	$3341	7.094	$16,203
Commerical	475-381	0.5	$3169	12.738	$ 6,774

Number of working spouses of alternative use site employees	1,314 - 1,329
Average W&S, working spouses of alternative use site employees	$11,386

Personal Income Adjustment	1.18
Net Multipliers	
Alternative use employees	.24 - .40
Alternative use working spouses	.00 - .40

a. Residential Property Tax Revenue ($2,242,000)

Percentage induced income accruing to district residents	0.044%
Per capita personal income, SMSA	$8,489
ADA, non-base connected families	3,186

b. Commercial Property Tax Revenue ($507,000)

(In Bellevue, all commercial property tax revenue attributable to alternative use employees is included in the revenue generated by the site itself)

c. General Fund State Aid ($5,103,000)

Non-categorical aid	$4,093,000
Categorical and miscellaneous "other" State aid	$1,010,000

d. Miscellaneous "Other" Local Revenues (Non-Property Tax Revenues) ($615,000)

Total ADA, district	9,191
Miscellaneous "other" local revenue, function of ADA	$354,000
Miscellaneous "other" local revenue, function of local educational agency revenues (Interest income)	$261,000

ATTACHMENT II

BASIS FOR PROJECTIONS OF ALTERNATIVE SITE USE

Estimates regarding how the site occupied by Offutt Air Force Base would have been used if the base had not been established were made by three experts on land use in the area:

Roger Corbin, Director of Community Development, City of Bellevue
John Watters, Chairman, Planning Commission, City of Bellevue
Al Dvorek, Sarpy County Tax Assessor

They separately reached a consensus that the site would have been used for the following purposes:

- 50-60 percent industrial
- 20-25 percent commercial
- 20-25 percent residential

The following sections summarize their main points:

INDUSTRIAL

The site occupied by Offutt, according to Corbin, is a "first-class industrial tract" for the following reasons:

Access to Port Facilities. The Offutt site is situated within a few miles of both the Missouri River to the east and the Platte River to the south. More river frontage is available to the site than is available to adjacent Douglas County, which is heavily industrialized. One firm, the Allied Chemical Company, has taken advantage of this accessibility and located between Offutt and the confluence of the rivers, three miles south of the base. As an agribusiness, Allied Chemical relies heavily on the two rivers.

The proximity of the Offutt site to river transport does not make it susceptible to the risks of flooding, according to the experts. The site's altitude puts it beyond the flood plain, making it, in Corbin's words, "high and dry."

Access to Other Transportation. The Burlington Northern Railroad borders the base less than one-half mile to the east. This segment of the railroad was built in 1870, 18 years before President Cleveland signed the bill that authorized the purchase of what is now Offutt land for the site of the original Fort Crook.

Separating the Offutt Base proper from the military family housing is Highway 73-75, which was a heavily-traveled route before the Fort Crook purchase and remains so today. It is the only four-lane highway in Nebraska that runs north and south.

Inexpensive Land. Offutt would sell for $0.15-$0.20 per square foot if vacant and sold as industrial land, according to Progress West, an Omaha real estate firm. This compares favorably with the price of industrial land close to Omaha, which has recently sold for $0.30-$0.35 per square foot.

Availability of Labor. The population of the Omaha SMSA is nearly 581,700, with downtown Omaha 10 miles away from the site. Over 98 percent of the employed labor force is in non-agricultural employment; of these employees, 25.2 percent are in trade, 13.9 percent in manufacturing; 8.7 percent in transportation, communication, and utilities; and 4.6 percent in mining and construction.

Industrial Plants Nearby. The location of the plants nearby suggests that industry finds the area desirable. A meat-packing factory and a radio parts plant have located on inferior industrial land one-half mile northeast of the base. The land is inferior to Offutt's because it is lower--and therefore more susceptible to flooding--and because road access is poor. Other nearby plants include National Byproducts rendering factory one mile south, the Allied Chemical plant three miles south, and a tanning factory off Highway 73-75 to the west.

Offutt's Plant. Building D was used for industrial purposes from 1941 to 1944. The 1.3 million square foot building, that now houses the world's largest computer complex, was used for aircraft assembly, producing about 55 finished planes per month. As many as 14,500 people were employed there at one time, though 9,000-10,000 employees was about average. (This compares with the economic impact study's projection that 7,513-9,022 employees would work at industrial facilities on Offutt. These projections were based on employee per-acre figures for the Omaha SMSA.)

COMMERCIAL

Projections about commercial use of the site focused on use of Highway 73-75, which separates the western edge of the base proper from the military family housing. The side opposite Offutt is lightly commercial, as the town placed it under commercial restrictions at the request of the base, according to the Bellevue Chamber of Commerce. The rest of the highway in Bellevue is occupied almost exclusively by commercial outlets.

Of the 240,892 employees in the SMSA, 21 percent are employed in services and 8.7 percent in finance, insurance, and real estate.

RESIDENTIAL

Estimates regarding residential use were based on development patterns along the northern border of the base. The residential section of Bellevue originated just northeast of the base, and that section remains the most densely populated residental section of the city. Much of the residential migration was westward, along the northern border of the base, so that the section north of the base is thickly residential. The land in the northern part of the base is suitable for residential development, according to Corbin. The military family housing, which consists of multi-room residential apartments, would have been used in much the same way, according to Dvorek and Corbin.

2) Douglas School District, Box Elder, South Dakota

Introduction

Douglas School District is an independent, heavily-impacted district in which 79 percent of the children enrolled are base-connected.[186] The vast majority of the children reside on Ellsworth Air Force Base and are "A" children, so that Douglas is a "Super A" district. Since more than 50 percent of the enrollment at the schools of the local educational agency is base-connected, Douglas is eligible to apply for an increased entitlement under section 3(d)(2)(B) of Public Law 874. Prior to fiscal year 1979, it had done so only in fiscal year 1978.

Douglas' Public Law 874 entitlement for fiscal year 1979 was $1.93 million, and it received $1.87 million.

The Area

Geography. Douglas School District, which was organized in the 1950's to accommodate children associated with Ellsworth Air Force Base, is located in rural, western South Dakota. The area consists of vast open land used for grazing cattle and sheep. The Black Hills are a few miles to the west near the western border of South Dakota; Mount Rushmore is within an hour's drive.

The district is 10 miles from Rapid City, a town of 52,070 that is the second largest in South Dakota. The district spills over from Pennington County, which also houses Rapid City, into Meade County to the north. The largest town in the Douglas School District is Box Elder, which has a population of 865. (*See* Maps 5 and 6, *infra*.)

Transportation. Box Elder is 10 miles east of Rapid City, to which it is connected along flat range land by Interstate 90. Transportation in the Rapid City area depends heavily on Interstate 90, which runs east-west across the State of South Dakota and offers seven exits into the town. This highway provides an important route for Rapid City's 20 trucking companies and two interstate bus lines. Three freight railroad lines intersect at Rapid City. The Rapid City Airport, with facilities for three airlines, is eight miles east of the city.

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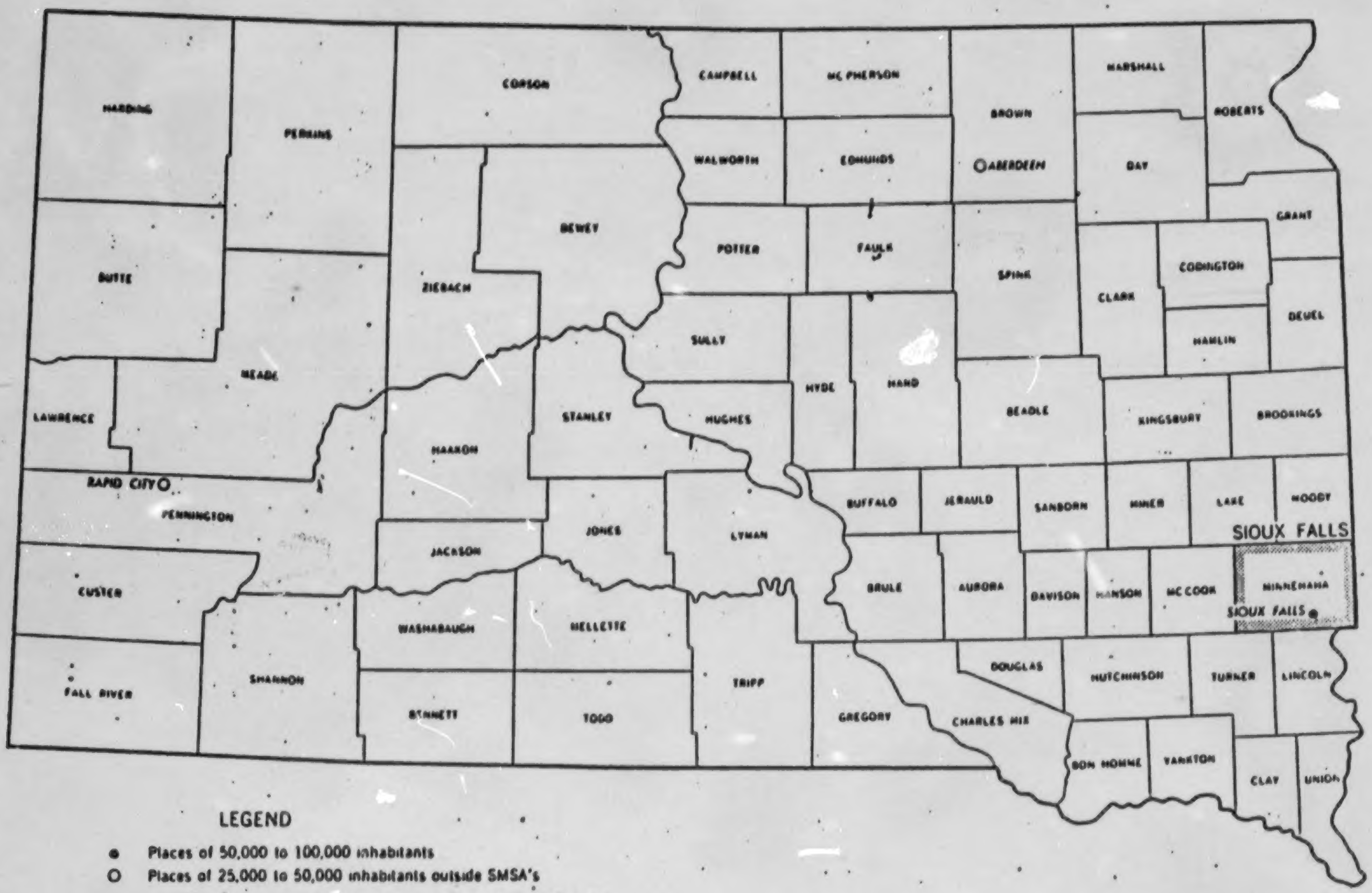
[186] "Base-connected" children are those who live with parents either living on, working on, or both living and working on a military base. There are two types of base-connected children: an "A" child lives with a parent who both lives and works on a military base; a "B" child lives with a parent who either lives or works (but not both) on a military base. Base-connected children do not include those federally-connected children whose parents live, work, or live and work on Federal installations other than military bases.

MAP 5
SOUTH DAKOTA


HARDING
PERKINS
CORSON
CAMPBELL
MC PHERSON
BROWN
MARSHALL
ROBERTS
WALWORTH
EDMUNDS
ABERDEEN
DAY
GRANT
BUTTE
ZIEBACH
DEWEY
POTTER
FAULK
SPINK
CLARK
CODINGTON
DEUEL
HAMLIN
MEADE
SULLY
HYDE
HAND
BEADLE
KINGSBURY
BROOKINGS
LAWRENCE
STANLEY
HUGHES
HAAKON
RAPID CITY
PENNINGTON
BUFFALO
JERAULD
SANBORN
MINER
LAKE
MOODY
SIOUX FALLS
JONES
LYMAN
JACKSON
CUSTER
BRULE
AURORA
DAVISON
HANSON
MC COOK
MINNEHAHA
SIOUX FALLS
WASHABAUGH
MELLETTE
DOUGLAS
HUTCHINSON
TURNER
LINCOLN
SHANNON
FALL RIVER
TRIPP
BENNETT
TODD
GREGORY
CHARLES MIX
BON HOMME
YANKTON
CLAY
UNION
SCALE
0 10 20 30 40 50 MILES

LEGEND

● Places of 50,000 to 100,000 inhabitants

○ Places of 25,000 to 50,000 inhabitants outside SMSA's

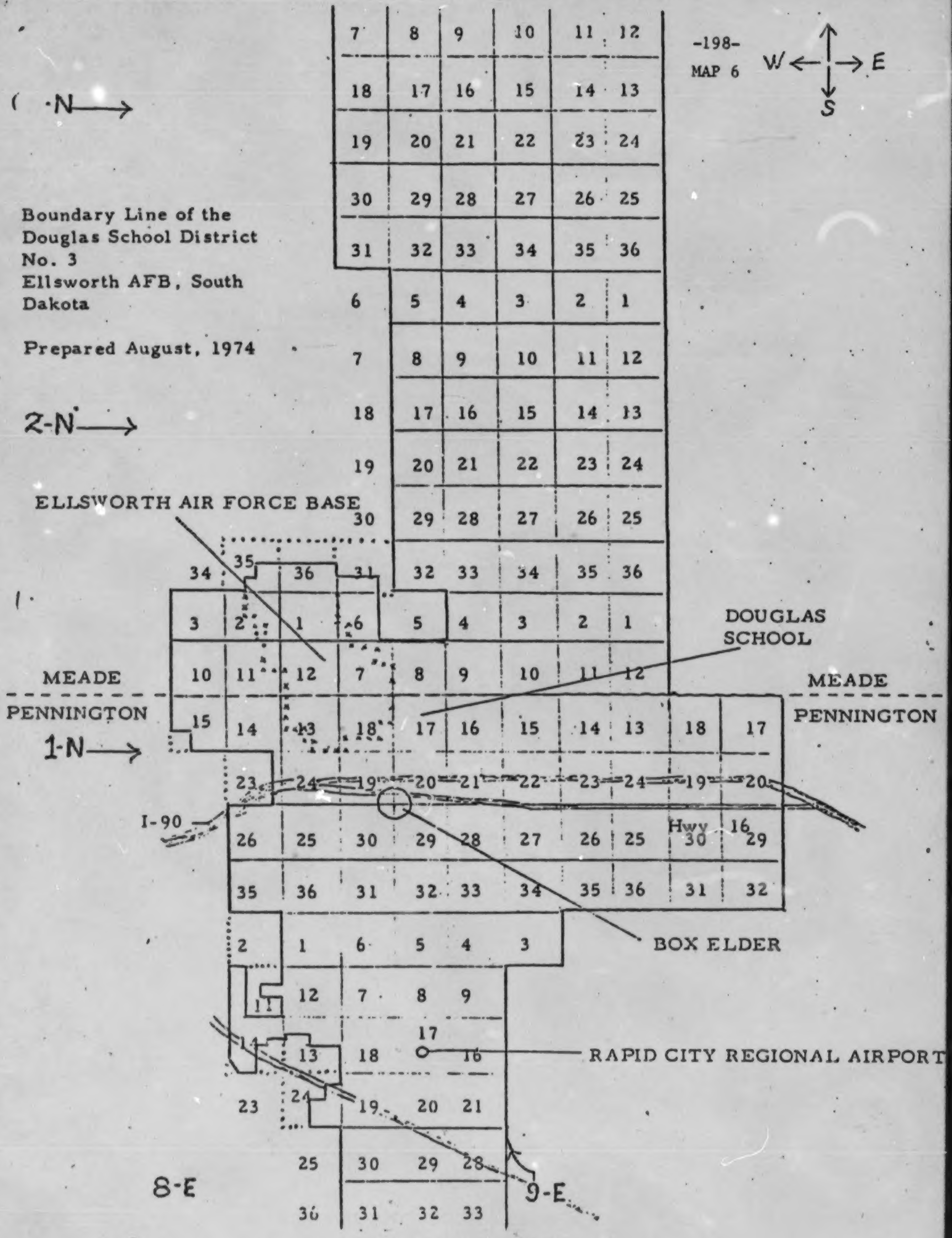
▨ Standard Metropolitan Statistical Areas (SMSA's)

236

237

U.S. Department of Commerce
BUREAU OF THE CENSUS

MAP 6



Boundary Line of the
Douglas School District
No. 3
Ellsworth AFB, South
Dakota

Prepared August, 1974

W
E
S
N
2-N
1-N
ELLSWORTH AIR FORCE BASE
DOUGLAS SCHOOL
MEADE
PENNINGTON
MEADE
PENNINGTON
I-90
Hwy 16
BOX ELDER
RAPID CITY REGIONAL AIRPORT
8-E
9-E
7 8 9 10 11 12
18 17 16 15 14 13
19 20 21 22 23 24
30 29 28 27 26 25
31 32 33 34 35 36
6 5 4 3 2 1
7 8 9 10 11 12
18 17 16 15 14 13
19 20 21 22 23 24
30 29 28 27 26 25
34 35 36 31 32 33 34 35 36
3 2 1 6 5 4 3 2 1
10 11 12 7 8 9 10 11 12
15 14 13 18 17 16 15 14 13 18 17
23 24 19 20 21 22 23 24 19 20
26 25 30 29 28 27 26 25 30 29
35 36 31 32 33 34 35 36 31 32
2 1 6 5 4 3
11 12 7 8 9
14 13 18 17 16
23 24 19 20 21
25 30 29 28
36 31 32 33

Economy. The Douglas District is located in two counties that are used primarily for agriculture. Pennington County is about 93 percent rural: 36 percent of its land area is covered by national forests and national parks, according to the U.S. Bureau of Land Management, and 57 percent of the county is assessed as agricultural, according to the Pennington County Assessor's office. In Meade County, 96 percent of the land is assessed as agricultural, according to the Meade County Assessor's office.

The following tables reflect the economic base of Pennington and Meade counties:

TABLE III

Economic Development, Meade and Pennington Counties
Total Population and Employees By Sector, 1958-78
(numbers in thousands)

POPULATION	1950	1960	1970	1978	Percent Change, Earliest-Most Recent Year
Meade County	11.5	12.0	16.6	19.6	70.4%
Pennington Co.	34.1	58.2	59.3	71.0	108.2
U.S.	151,325.8	179,323.2	204,335.0	218,717.0	44.5
MANUFACTURING	1954	1963	1972	1977	
Meade County	0.1	0.1	0.1	0.3	200.0
Pennnington Co.	0.9	1.2	1.5	2.7	200.0
U.S.	16,125.6	16,958.4	19,026.8	19,596.9	21.5
RETAIL*	1954	1963	1972	1977	
Meade County	0.5	0.5	0.7	0.9	80.0
Pennington Co.	3.2	4.3	5.1	6.4	100.0
U.S.	8,845.9	10,118.1	12,990.4	14,895.2	68.4
SERVICES*	1948	1958	1967	1977	
Meade County	0.1	0.2	0.2	0.3	200.0
Pennington Co.	0.4	1.4	1.7	3.1	675.0
U.S.	1,902.1	3,864.5	5,029.0	8,172.0	329.6
AGRICULTURAL*	1950	1959	1969	1974	
Meade County	1.3	1.1	1.0	1.0	-23.1
Pennington Co.	1.1	0.9	0.8	0.7	-36.4
U.S.	6,966.2	5,294.7	3,384.6	3,026.7	-56.6

* Employment in these sectors is the sum of the number of establishments and the number of employees. It is assumed that there is one proprietor per establishment. (Proprietors are excluded from the data on employees.)

Source: U.S. Census

TABLE VIII

Employees by Sector as Percent of Total Employees,
Meade and Pennington Counties
(figures in parentheses indicate latest year
for which data are available)

	*AG (74)	MANU (77)	*RET (77)	*SERV (77)	TOTAL
Meade County	40.0%	12.0%	36.0%	12.0%	100.0%
Pennington Co.	5.4	21.0	49.6	24.0	100.0
U.S.	6.6	42.9	32.9	17.9	100.0

* Employment in these sectors is the sum of the number of establishments and the number of employees. It is assumed that there is one proprietor per establishment. (Proprietors are excluded from the data on employees.)

Source: U.S. Census

The data reveal the following:

- Both counties are sparsely populated. Meade and Pennington counties have a combined population of only 90,600. These people are distributed over 6,224 square miles, giving the counties a density of only 14.6 persons per square mile. In the United States, by way of comparison, there was an average of 61.3 persons per square mile in 1978.

- Meade County is primarily agricultural: 40 percent of its employees work in agriculture, compared to 6.6 percent nationwide.

- The percentage of manufacturing employees in both counties is less than half the national average.

The School District

Douglas School District was formed in the late 1950's to serve the children of Ellsworth Air Force Base. It originated in 1891 as a one-room school in the town of Box Elder, South Dakota. Named for Thomas Baird Douglas, the father of six of the original seven students, its enrollment remained below 20 students for almost 60 years. When Ellsworth Air Force Base was reactivated in 1949, the school had to accommodate a huge influx of students. School officials organized an elementary school but sent older children associated with Ellsworth to Rapid City's intermediate and high schools. By 1955, the local educational agency served grades K-8 independently of Rapid City's school system. With the opening of Douglas High School in 1962, the agency became an autonomous K-12 system.

The base has dominated the district since its inception: today, 79 percent of the 2,584 children are base-connected. The proportion of children connected with the base has actually declined over the last two decades: in 1960, base-connected children constituted 97 percent of the student population, and in 1970, about 86 percent. During the 1960's the number of children attending Douglas schools tripled, as the following table shows:

Number of Total and Base-Connected Children,
Douglas School District, 1960-1979

	1960	1970	1979
Total ADA*	1,039	3,094	2,584
Base-connected ADA*	1,007	2,673	2,037

* Average daily attendance.

Source: SAFA.

The vast majority of base-connected children live on base: 1,808 children are "A" students. Of the 229 "B" students in the district, 141 are the children of military parents. The composition of Douglas's base-connected student population in 1979 was as follows:

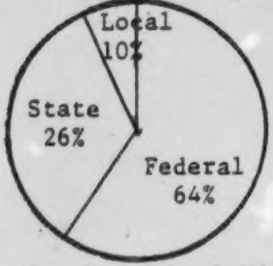
Composition of Base-Connected Children,
Douglas School District, FY 1979

Total ADA	2,584
Base-connected ADA	2,037
"A" Children	1,808
Military "B" Children	141
Civilian "B" Children	88

Source: SAFA

The local educational agency finances its schools with revenue that comes primarily from Impact Aid and, to a lesser extent, from State aid. Of the agency's $4.72 million of revenue in fiscal year 1979, Federal funds (predominantly Impact Aid) provided $3.00 million, or 64 percent of the total. State aid contributed $1.25 million, or 26 percent. The agency raised $0.47 million, or ten percent of its revenue from local sources. A chart illustrating these proportions is shown below:

Sources of Education Revenue,
Douglas School District, FY 1978-79



Source: Douglas School District

The tax base of the local educational agency is predominantly residential: 58 percent of the local property tax revenues come from residential sources. The rest of the local revenues are generated by commercial property, which contributed 21 percent of the property tax revenue, and from agricultural sources, which accounted for 21 percent of the revenue.

The assessed valuation per pupil in Douglas is among the lowest in the State. Its $3,555 per-pupil assessed valuation compared poorly with the State average of $35,270 in 1979. The value of taxable property available for each pupil in the district, in other words, was about one-tenth the value of the State average.

The mill rate used by the local educational agency was the highest allowed by State law: Douglas levied a tax of 26 mills on agricultural property and 42 mills on non-agricultural property. Only 42 of the 194 local educational agencies in South Dakota taxed property at the maximum rate. Of the five agencies approved by the Education Department as being comparable to Douglas, only two taxed at the maximum rate.

Ellsworth Air Force Base. Ellsworth Air Force Base occupies 6,646 acres in the middle of the district. It is by far the biggest employer in the area: the number of employees at the base alone was about the same as the number employed in the manufacturing, agriculture, and service sectors in Pennington and Meade counties combined. The base payroll was $86.9 million in 1979.

Employment at the base has grown steadily over the past two decades: from 5,070 employees in 1960, employment rose to 6,114 in 1970 and finally to the 6,598 employed at Ellsworth today. The source of most of this growth has been the increase in military employees assigned to Ellsworth, as the following table shows:

Number of Employees at Ellsworth Air Force Base, 1960-1979*

	1960	1970	1979
Total	5,070	6,114	6,598
Military	4,619	5,477	6,014
Civil Service	451	637	584

* These figures do not include contractors or Non-Appropriated Fund employees.
Source: Department of Defense

Sixty-one percent of the military employees, or 3,674 employees, lived on base in 1979. Very few of the other employees lived in the school district: of the 2,924 employees that were living off base, only 327 lived in the district, despite its proximity to the base.

The average salary for Ellsworth's military employees was $12,543 in 1979, while the base's civilian employees had an average income of $20,000. The average salary for non-base personnel in the area was $11,132, in line with the military scale but far below that of civilian base employees.

Sales at commercial facilities on base totaled $18.7 million in 1979. On-base sales were four times higher than retail sales in Box Elder, where sales totaled $4.7 million in 1979.

Summary of Results for Douglas School District

The following table summarizes the results for the Douglas School District.*/

Expenditures

	Per-Pupil Expenditures	Base-Attributable (million $)	Alternative Use (million $)
Comparable districts	$1,293	$2.7-$2.7	$0.005-$0.005
State average	$1,341	$2.8-$2.8	$0.005-$0.005

Revenues

Source		
Property taxes	$0.1-$0.1	$0.0036-$0.0036
State aid	$1.0-$1.0	$0.0021-$0.0021
Miscellaneous "other" local revenue	$0.1-$0.1	$0.0003-$0.0003
Total	$1.2-$1.2	$0.0060-$0.0060

Burden

Net Burden = (Current burden - Alternative use burden)
= (Current expenditures - Current revenues)
- (Alternative use expenditures - Alternative use revenues)

	Lower Bound (millions $)	Upper Bound (millions $)
Comparable PPE:	(2.7-1.2) - (0.006-0.006) $1.5	(2.7-1.2) - (0.006-0.006) $1.5
State avg. PPE:	(2.8-1.2) - (0.005-0.006) $1.6	(2.8-1.2) - (0.005-0.006) $1.6

Entitlement accounted for by Ellsworth Air Force Base = $1.9 million.

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*/ Figures rounded for clarity. Those used in text are the midpoints.

Results

The fiscal burden estimated by the study for Douglas School District was between $1.5 and 1.6 million in 1979. The entitlement for the district that year was $1.9 million. The study's estimate of the midpoint burden imposed by Ellsworth Air Force Base, therefore, was within 20 percent of the entitlement determined by the Public Law 874 formula.

The study found that the burden occurred because the revenues generated by base employees failed to compensate for the costs they imposed on the local educational agency. The shortfall in revenue occurred because base employees failed to contribute as much property tax per pupil as non-base employees did. Base-attributable employees and schoolchildren[187] were as responsible for as much or more of the other agency revenues--which consist largely of State aid and miscellaneous "other" local revenue--as non-base attributable employees and schoolchildren were. The study also found that revenues from alternative use of the site would have paid for children associated with that site. The following table compares per-pupil revenues contributed by base-attributable and non-base-attributable families in Douglas:

Per-Pupil Revenue Contributed by Base-Attributable and Non-Base-Attributable Families, by Source, FY 1979

	Base-Attrib.	Non-Base-Attrib.
Property Tax Revenue/ADA	$ 54	$480
State Aid/ADA	$482	$482
Miscellaneous "Other" Local Revenue/ADA	$ 41	$ 33
Total	$571	$995

The property tax contributions of employees associated with the base was about $0.11 million, or only four percent of the costs imposed on the local educational agency by the employees' schoolchildren. Base-attributable families in Douglas paid $54 per pupil in property taxes, while non-base-attributable families paid $480 per pupil. The reasons for these small contributions to property tax revenue include the following:

- Only seven percent of the employees who worked at Ellsworth Air Force Base lived off base in the Douglas School District. Of the 6,708 employees (including NAF employees and contractors) at the base, only 437 paid residential property taxes to the district.

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[187] "Base-attributable" refers to the sum of "base-connected" and "base-induced," and applies to employees, their schoolchildren, their incomes, and their families. It also applies to expenditures and to revenues of the local educational agency that have been accounted for by base-attributable families. "Base-induced" refers to those employees (as well as to their schoolchildren and income) in the commercial sector who were hired to accommodate the spending of base employees.

- Commercial establishments at Ellsworth had sales of $18.7 million in 1979. These sales dwarfed the sales of establishments in Box Elder, within Douglas School District. The sales of establishments at Ellsworth were about four times as high as the $4.7 million in sales of the 24 establishments in Box Elder.

- Military employees who choose to shop off base also have the opportunity to shop in Rapid City, a town of 52,070 people approximately ten miles away, where retail sales totaled $379.8 million.

- Induced income from consumption by base employees[188/] was about $0.6 million in Box Elder, resulting in $0.009 million in property tax revenue. According to the study, the amount of induced income was so small because the amount of consumption in Box Elder was relatively small in comparison with Ellsworth and Rapid City and because the intermediate purchases of establishments in Box Elder were all made in Rapid City.

Though base-attributable families did not pay as much in property taxes as other families, they accounted for just as much State aid. State aid was the most substantial revenue for which base-attributable families were responsible: children associated with Ellsworth triggered $1.0 million in 1979, or 37 percent of the costs imposed by these children. In contrast, districts in the rest of South Dakota received only 16 percent of their revenues from the State. State aid per pupil to Douglas was $482, compared with $244 to local educational agencies, on average, throughout South Dakota.

Douglas's miscellaneous "other" sources of local revenue--aside from the property tax and general State aid--included, chiefly, interest earned from its investments. Base-attributable employees contributed $0.084 million to these revenues, which were a function of district revenue and number of pupils, respectively. The per-pupil contributions to miscellaneous "other" local revenues approximated the contributions of non-base employees in the district. Base-attributable employees paid $41 per pupil in miscellaneous "other" local revenue, and non-base-attributable employees in the district paid $33 per pupil.

The correspondence between the Commission's finding of a $1.5 million burden and the Public Law 874 entitlement of $1.9 million--a difference of 21 percent--stems from two factors:

- The data used by the Commission and applied by the Public Law 874 formula proved to be similar. The local contribution per pupil ("local contribution rate", or LCR) figures were approximately the

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[188/] See note 187, *supra*, regarding the term "base-induced."

same because discrepancies between data used to compute the figures--per-pupil expenditures and local share of expenditures--were minor. In addition, the figures for weighted number of pupils were similar because the size of the commercial property tax contributions and miscellaneous "other" local revenues contributed by base-attributable families--revenues that were taken into account by the Commission model but not by the Public Law 874 formula--were very small.

- The Public Law 874 formula captured virtually all the patterns of Federal impact that the Commission found applied to Douglas School District. The Commission found that insertion of its data into the Public Law 874 formula resulted in an estimate of entitlement within about $0.1 million of the Commission's final determination of burden. The variables in the formula therefore explained virtually all of the burden found by the Commission.

Douglas's LCR in 1979 was $975, reached by multiplying the weighted number of per-pupil expenditures in Douglas's five comparable districts by the local share of expenditures in those districts. The Commission found that substitution of its own data into the Public Law 874 formula resulted in a local contribution per pupil of $843, just 14 percent below the LCR used in the formula.

The following table shows how the local contribution rate for Douglas was determined under current law and what that rate would have been if the study's data were used:

Local Contribution Per Pupil and LCR, Determined Using Commission Data and P.L. 874 Data, Respectively

	Per-Pupil Expenditure	Local Share	Local Contribution Per Pupil/LCR (PPE x Local Share)
Commission*	$1,317	0.64+	$843
P.L. 874	$1,273†	0.77	$975

* The Commission figures represent the midpoint in the range of data determined and used by the study.

† Weighted average of per-pupil expenditures, five comparable districts, FY 1979.

+ Study's determination of non-State share of costs of base-attributable children.

The Commission's determination of local contribution per-pupil was 13 percent below the LCR under Public Law 874. This is because the Commission's higher per-pupil expenditure was offset by the Commission's lower estimate of local share, resulting in a product that also was lower than the LCR determined by the formula.

The per-pupil expenditure figure used by the Commission was higher than that used under Public Law 874 because the Commission's data was more current. The Commission estimated Federal impact for 1979 from fiscal year 1979 data on per-pupil expenditures for the State and for the comparable districts approved by the Department of Education. The Public Law 874 formula, in contrast, applied per-pupil expenditure figures from fiscal year 1977 to estimate Douglas's entitlement for fiscal year 1979. This two-year-old data did not reflect the cost increases that occurred between 1977 and 1979.

The per-pupil expenditure figure used by the Commission, however, was only $44 higher than that applied by the formula because, in computing per-pupil expenditures, the Commission did not include Federal contributions to local expenses, while the figure applied by the formula did include Federal contributions. (The Commission model does not consider Federal contributions to either expenditures or revenues because the agency has no discretion over Federal categorical funds.) Local educational agencies in South Dakota received 13.5 percent of their revenue from the Federal Government in 1979, according to the Education Department. This Federal proportion of revenue was the third highest of all States in the United States. The largest program grants were Impact Aid, grants for educationally-deprived children, and grants for Indian education to local educational agencies.

The local share of base-attributable expenditures estimated by the Commission--which amounted to 64 percent of total expenditures--was lower than the local share determined by the Public Law 874 formula. The Commission estimated the local share by first determining the current expenditures imposed by base-attributable children and the State revenue triggered by base-attributable families. The Commission then divided the difference between the two figures by base-attributable current expenditures to arrive at local share [Local Share = (Expenditures, Base-Attributable - State Revenues, Base-Attributable) ÷ Expenditures, Base-Attributable].

The local share determined under the Public Law 874 formula was higher because the formula uses the local share of total current expenditures in five comparable districts--in contrast to the Commission's determination of non-State share of expenditures for base-attributable children in Douglas School District. State contributions per pupil to non-impacted districts (such as the five comparable districts in South Dakota) were generally lower than those to federally-impacted districts, making the local share higher; this was because the State formula increased aid as assessed valuation per pupil in a district decreased. The assessed valuation per pupil in Douglas's five comparable districts was $33,085, nearly ten times as high as the assessed valuation per pupil in Douglas, which was $3,555 in 1978. Thus, State aid to the comparable districts was lower than that to Douglas.

Moreover, the assessed valuation per base-attributable child in Douglas was smaller than the same figure for non-base-attributable children in the district. This is because there was no assessed valuation associated with the place of employment of base employees or with the residences of those employees who lived on base. The Commission found that the assessed valuation per base-attributable child in Douglas was only $1,331, considerably smaller than the $12,176 associated with non-base-attributable children in the district. Because State aid to base-attributable children in Douglas was substantially higher than to all children in Douglas's five comparable districts, the Commission's estimate of non-State share of costs was substantially below the local share determined in the Public Law 874 formula.

Thus, the Commission figure for local contribution per base-attributable child was somewhat lower than the LCR used in computing Douglas's Public Law 874 entitlement. Because this difference was relatively small, however, and because the revenue contributions that the Commission took into account but the formula did not were also relatively small, the result was an estimate of burden that was only slightly below the Public Law 874 determination of entitlement.

The Public Law 874 formula determines entitlement by multiplying the local contribution rate by the weighted number of federally-connected[189/] children. The weights assigned to each child differ on the basis of the statute's estimate of the relative property tax burden imposed by each child's family.[190/]

[189/] "Federally-connected" children are those who live with parents either living on, working on, or both living and working on Federal property. There are two types of federally-connected children: an "A" child lives with a parent who both lives on and works on Federal property; a "B" child lives with a parent who either lives on or works on (but not both) Federal property. Federally-connected children include base-connected children as well as children whose parents live on, work on, or both live and work on Federal installations other than military bases.

[190/] Children of military parents living on base are assigned a weight of 1.0 because their parents contribute no property taxes to the local educational agency; children of military parents living off base, on the other hand, are assigned a weight of 0.5 on the ground that their parents pay property taxes on their residence, which are assumed to account for 50 percent of all property tax revenues. Other weights are assigned to pupils who are the children of civilian employees, and their weights differ according to whether their parents live in or out of the county. Finally, still other weights are assigned to those children participating in special education programs. The Commission assigned induced children a weight of 0.45, the same weight that is given by Public Law 874 to children of civilian employees working in the county.

The Commission considers these property tax contributions from base-attributable families but also takes into account their contributions to commercial property tax revenues and local non-property tax revenues. If the Commission model were to incorporate these revenue contributions into the Public Law 874 formula, the effect would be to lower the weight applied by Public Law 874 to measure burden.

Because contributions of base-attributable employees to commercial property tax revenue amounted to only $0.05 million in Douglas in fiscal year 1979, the weights applied by the Public Law 874 formula would not differ very much from those that the Commission model would have applied if it used the same method as the formula.

To determine how well the variables in the Public Law 874 formula captured Federal impact as measured by the Commission model, the Commission estimated entitlement by inserting its own data in to the Public Law 874 formula. The two inserted variables--somewhat different from those actually applied to Douglas by the formula--were the Commission's determination of the local contribution per base-attributable child and the number of base-attributable children using the weights assigned to these children by Public Law 874. In determining the number of children, the Commission included base-induced children in the district as well as children directly connected to the base. The Commission incorporated induced employees and their schoolchildren into all calculations of base effects on expenditures and revenues.

A comparison of the determinations of entitlement using Commission data and data provided under Public Law 874 yields the following results:

Entitlement, Determined with P.L. 874 Data and
Commission Data (Using P.L. 874 Weights)

Public Law 874		Commission	
Local Contribution Rate	$975	Local Contribution Per Base-Attributable Child	$843
Weighted Number of x Base-Connected Children	1,957	Weighted Number of x Base-Attributable Children	1,965
= Entitlement	$1.9 million	= Entitlement	$1.7 million

This $1.7 million entitlement--reached by inserting Commission data into the Public Law 874 formula--is $0.2 million above the Commission's final result of a $1.5 million burden. This proximity suggests that the Public Law 874 formula captures many of the same dynamics of Federal impact that the Commission estimated were taking place in Douglas.

The $0.2 million difference stems from the Commission's consideration of additional revenue sources--such as commercial property tax revenue and miscellaneous "other" local revenues--that would lower the weights applied to the number of children to reflect their burden. The contributions to these revenues from base-attributable employees reduce their burden to the local educational agency, according to the model.

The Commission's determination of burden was commensurate with Douglas's actual entitlement because the data used by the Commission study and data applied by the formula were similar. The Commission's estimate of local contribution per base-attributable child was somewhat lower than the corresponding figure applied in the Public Law 874 formula (the result of the smaller local share determined by the Commission), and the weighted number of base-connected children would have been somewhat higher. The differences in the data were so small, however, that the difference in final result was insubstantial. The other reason that burden and entitlement were similar was that the formula captured most of the impact of Ellsworth Air Force Base on Douglas School District. The most important components of Federal impact in the Commission study proved to be the variables in the formula.

Alternative Use. The study's analysis of alternative use in Box Elder reckoned that revenues from the site would have paid for the school-age children associated with that site. District expenditures for children associated with the site would have amounted to $0.005 million. Revenues generated by the site would also have approximated $0.006 million.

The revenues and expenditures attributable to the site would have been comparatively small because the base would have been used entirely for agriculture. (See Attachment II, infra.) The 6,646 acres of the base would probably have been used for three farms. (A farm is typically 2,096 acres in Meade and Pennington counties.) Alternative use of the base site would have raised the per-pupil assessed valuation in the district from the current $3,555 to $12,254. The size of this figure is comparable to the per-pupil assessed valuation associated with non-base-attributable families in the district today, which is $12,176.

The study found that there would have been four school-age children associated with the site and that, with per-pupil expenses between $1,293-$1,342, the expenditures they would have imposed on the local educational agency would have been $0.005 million. These three farms would have contributed about $0.0036 million in property tax revenue. This projection is based on the assumption that the assessed valuation of the three farms would have been the same as the typical farms in this area in 1979--about $29 per acre in Pennington County and $14 per acre in Meade County, according to the County Assessors.

The four children from the site would have triggered State aid funds of $482 per pupil, as Douglas children did in 1979, for a total State contribution of $0.002 million as a result of the site.

ATTACHMENT I

STATISTICAL PROFILE, DOUGLAS SCHOOL DISTRICT, FY 1979

Summary

I. School District

Average Daily Attendance (ADA)	
Total	2,584
Base	2,037
Military A	1,808
Military B	141
Civilian B	88
Base Employees	
Total	6,708
Military, total	6,014
Living in district, on base	3,628
Living in district, off base	283
Civilian, total	694
Living in district	228
Acres	
Acres, district	93,645
Acres, base	6,646

II. Local Educational Agency

Per-pupil expenditure, average of comparable districts	$ 1,293
Per-pupil expenditure, State average	$ 1,342
Total Property Tax Revenue	$ 367,000
Residential sources	$ 214,000
Commercial sources	$ 77,000
Industrial & agricultural sources	$ 76,000
Total General Fund State Aid	$1,246,000
Miscellaneous "Other" Local Revenue	$ 101,000
P.L. 874 Entitlement, Ellsworth Air Force Base	$1,927,000
P.L. 874 Appropriation	$1,873,000

Current Use

I. Current Expenditures

Average personal income	$13,400
ADA/Job	0.411
Per-pupil expenditure, comparable districts	$1,292
Per-pupil expenditure, State average	$1,342
ADA, base	2,037

II. Current Revenues

Type Of Employees	No. living in district	Avg. Wage & Salaries (W&S)
Civil service	72	$20,114
Non-Appropriated Fund employees (NAF)	39	6,448
Contractors	71	11,132
Working spouses	45	11,132
Military off base	255	11,865
Working spouses	68	11,132
Civil service living on-base	46	14,734
Military living on base	3,628	11,192
Military living in tax-exempt mobile homes	28	11,865
Working spouses	931	$11,132

Personal Income Adjustment, base employees (except NAF)	1.17
Personal Income Adjustment, NAF employees	1.10

Net Multipliers

Civil service employees	.09
Spouses, civil service employees	.00 - .09
NAF employees	.09
Military employees	.04
Spouses, military employees	.00 - .04

a. Residential Property Tax Revenue ($214,000)

Civil service, living in district	118
Civil service, total	584
On-base population	8,689
Per capita personal income	$7,760
ADA, non-base-connected, living in district	547
ADA, low-rent public housing	0
Population/ADA, off base	4.79

b. Commercial Property Tax Revenue ($77,000)

Percentage of personal income spent on retail goods and taxable services	59.3%
Military payroll, employees living on base and in district	$65,254,000
Military payroll, employees living in county or SMSA	$75,436,000
Total on-base sales	$17,863,000
Number of establishments, Box Elder	24
Average earnings per establishment, Pennington County (excluding Rapid City)	$ 194,790
Purchases of retail goods & taxable services in Box Elder by non-military families	$ 2,269,000
Total purchases of retail goods & taxable services by non-military families	$16,337,000

c. General Fund State Aid ($1,246,000)

Non-categorical aid	$1,214,000
Categorical aid & miscellaneous "other" aid	$ 32,000

d. Miscellaneous "Other" Local Revenues (Non-Property Tax Revenues) ($101,000)

Total ADA, district	2,584
Miscellaneous "other" local revenue, function of ADA	$ 52,000
Miscellaneous "other" local revenue, function of local educational agency revenues (Interest income)	$ 49,000

Alternative Use

III. Alternative Use Expenditures

Average personal income	$13,400
ADA/Job	0.411
Per-pupil expenditure, comparable districts	$ 1,293
Per-pupil expenditure, State average	$ 1,342

IV. Alternative Use Revenues

	No. Acres	% Land Used	Avg. Tax Per Acre	Emp. Per Acre	Avg. W&S
Agricultural land					
Pennington Co.	2,809	100	$.69		
Meade County	3,837	100	$.34		
Agric. Proprietors				.0005	$9,816
Agric. Employees				.0001	$5,442

Number of working spouses of alternative use site employees	1
Average W&S, working spouses of alternative use site employees	$11,132

Personal Income Adjustment	1.17
Net Multipliers	
Alternative use employees	1.03
Alternative use working spouses	0 - 1.03

a. Residential Property Tax Revenue ($214,000)

Percentage induced income accruing to district residents	5.5%
On-base population	8,689
Per capita personal income	$7,760
ADA, non-base families	547
ADA, low-rent public housing	0
Population/ADA, off base	4.79

b. Commercial Property Tax Revenue ($77,000)

Percentage of personal income spent on retail goods & taxable services	59.3%
Percentage of purchases of retail goods and taxable services by residents of district in district	4.8%
Number of establishments, Box Elder	24
Average earnings per establishment, Pennington County (excluding Rapid City)	$ 194,790
Purchases of retail goods & taxable services in Box Elder by non-military families	$ 2,269,000
Total purchases of retail goods & taxable services by non-military families	$16,337,000

c. General Fund State Aid ($1,246,000)

Non-categorical aid	$1,214,000
Categorical aid & miscellaneous "other" aid	$ 32,000

d. Miscellaneous "Other" Local Revenues (Non-Property Tax Revenues) ($101,000)

Total ADA, district	2,584
Miscellaneous "other" local revenue, function of ADA	$ 52,000
Miscellaneous" other" local revenue, function of local educational agency revenues (Interest income)	$ 49,000

ATTACHMENT II

BASIS FOR PROJECTIONS OF ALTERNATIVE SITE USE

Estimates of how the site occupied by Ellsworth Air Force Base would have been used if the base had never been established were made by the following experts on land use in the area:

Bernard Bachman, Budget Office, Ellsworth Air Force Base
Helen Daughenbaugh, Pennington County Auditor
Tom Fuhrmann, Pennington County Director of Equalization
Lillian Jurans, Deputy Pennington County Auditor
Van Lindquist, 6th District Council of Local Govenments
Frank McDaniel, Pennington County Planning and Zoning Office
Bob Stokes, Senior City Planner

They reached a consensus that the entire site--100 percent of the land--would have been used for agricultural purposes. They agreed that most of it would have been used as cropland and some as grazing land. Their conclusions were founded on two arguments: the quality of the site is conducive to agricultural use, and the area surrounding the base is predominantly agricultural.

Until the site currently occupied by Ellsworth was sold to the Federal Government in 1942, it was used entirely for agricultural purposes --primarily as cropland. It is a flat plateau of ground--"like a table," said Bachman, who has been involved in real estate in the area for over 30 years. The site was "ideal" for farmland, the panel agreed, because the soil texture is choice--a dark, loam soil that provides a fine bed for seeds. The soil contains few rocks, and the site itself has very few ditches.

The area surrounding the site occupied by Ellsworth Air Force Base is also predominantly rural. The city of Box Elder (population: 865), in which the base is located, developed commercially and residentially around the base; Box Elder did not become an incorporated city until after Ellsworth was established. The closest town to Box Elder is New Underwood, about ten miles away, which has a population of 416. Downtown Rapid City is 15 miles from Box Elder and has a population of 52,070.

The site occupied by the base is located in both Pennington and Meade Counties. About 93 percent of Pennington County--which includes Rapid City--is rural: 57 percent of the county is assessed as agricultural, according to the Pennington County Assessor's Office, and 36 percent is covered by national forests and national parks--including the Mount Rushmore National Monument Memorial, the Black Hills National Forest, and Badlands National Monument--according to the U.S. Bureau of Land Management. In Meade County, 96 percent of the land is assessed as agricultural, according to the Meade County Assessor's office.

In Douglas School District there were 49,389 acres that were appraised. Of these, 34,007 acres--or 69 percent of the acreage in the district--were assessed as agricultural. One thousand nine hundred one acres--or four percent of the district's acreage--were under residential use, and 108 acres--or 0.2 percent of the district--were under commercial use. There are 1,202 residential lots in the district and 50 commercial lots, according to the Pennington County Auditor.

3) Escambia County School District, Pensacola, Florida

Introduction

The Escambia County School District is run by an independent educational agency that receives most of its revenue from the State under the school finance laws in Florida. The State provides over half of all education revenues in Florida and two-thirds of the revenues in the Escambia County School District. The district is impacted primarily by the Pensacola Naval Air Station, which has five large fields located in the southern part of the district, and somewhat by Eglin Air Force Base, which has a small field located in Escambia County. The Public Law 874 entitlement of Escambia County that was accounted for by these two bases was $3.2 million in fiscal year 1979; its actual payment as a result of these facilities was $1.8 million that year.

The Area

Geography. The Escambia County School District is coterminous with Escambia County. The County is the westernmost county in the Florida Panhandle, bordered on the north and west by the State of Alabama, on the south by the Gulf of Mexico, and on the east by the rest of the Florida Panhandle. The county extends approximately 50 miles north from the Gulf of Mexico to the Alabama border. (See Maps 7 and 8, infra.)

Pensacola, the county seat of Escambia County, is the largest city and the leading commercial and industrial center in western Florida. The city occupies 24 square miles on the northwest shore of Pensacola Bay.

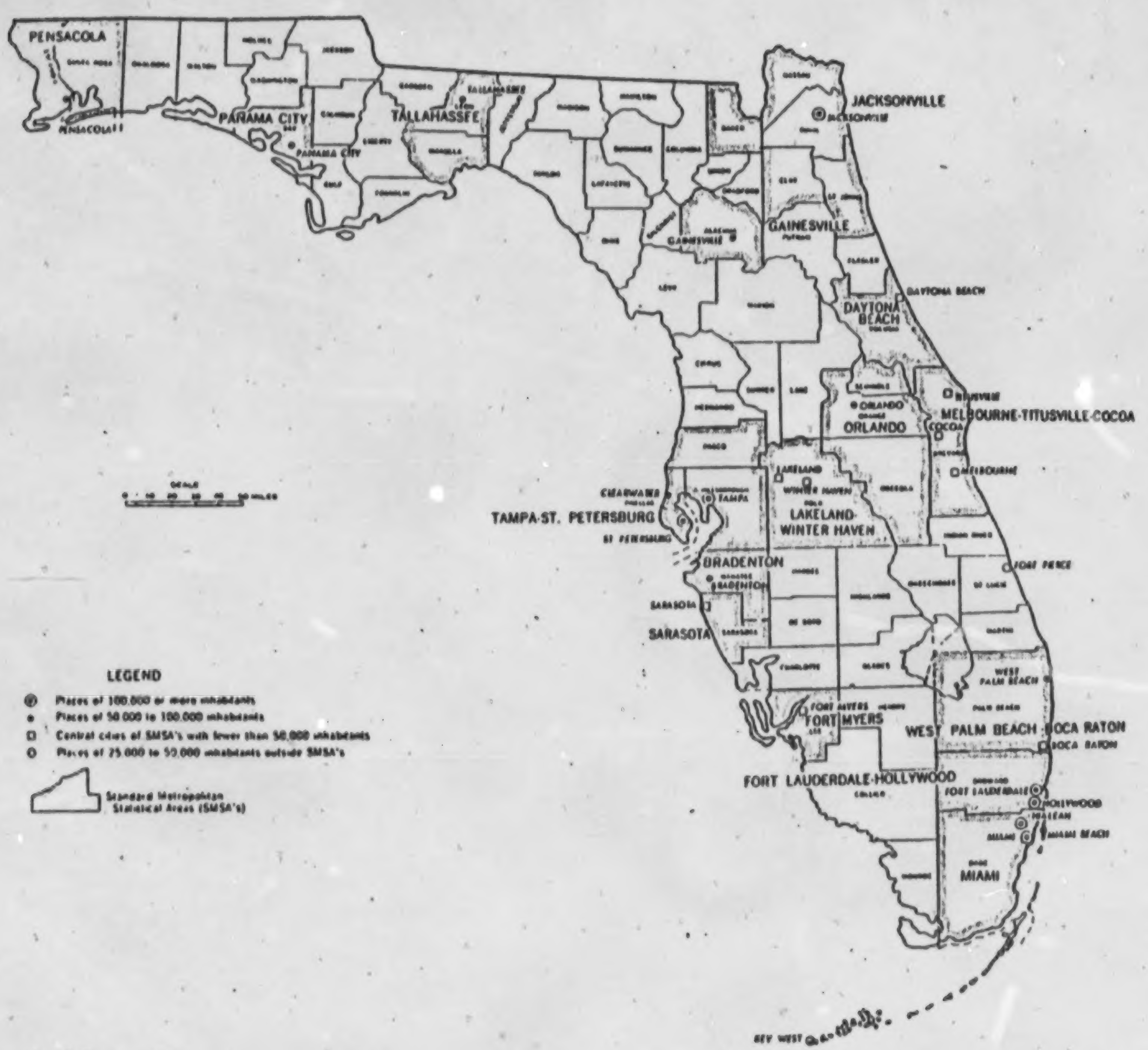
Pensacola is the "central city" of the Pensacola SMSA, in which Escambia and Santa Rosa counties are located. In 1978, the estimated population for Pensacola was 61,000 and that of the SMSA was 275,000.

The Pensacola naval complex is headquartered at the Naval Air Station on Pensacola Bay. Six other naval installations are scattered around the southern portion of Escambia County, and one is located in neighboring Santa Rosa County.

Transportation. Transportation services in Escambia County are extensive. Air service by two major airlines is provided at Pensacola Regional Airport, which is operated by the city. It is located in northeast Pensacola, just north of the Port of Pensacola, and ten miles northeast of the base. The Port of Pensacola, a deep-water port facility, connects with the intracoastal waterway to provide shipping access to the Gulf of Mexico. Escambia County is intersected by four major highways, US 90, US 98, US 29, and Interstate 10, which is part of the Federal highway system. This network enables two interstate bus lines and many trucking companies to serve Pensacola. (See Map 9, infra.)

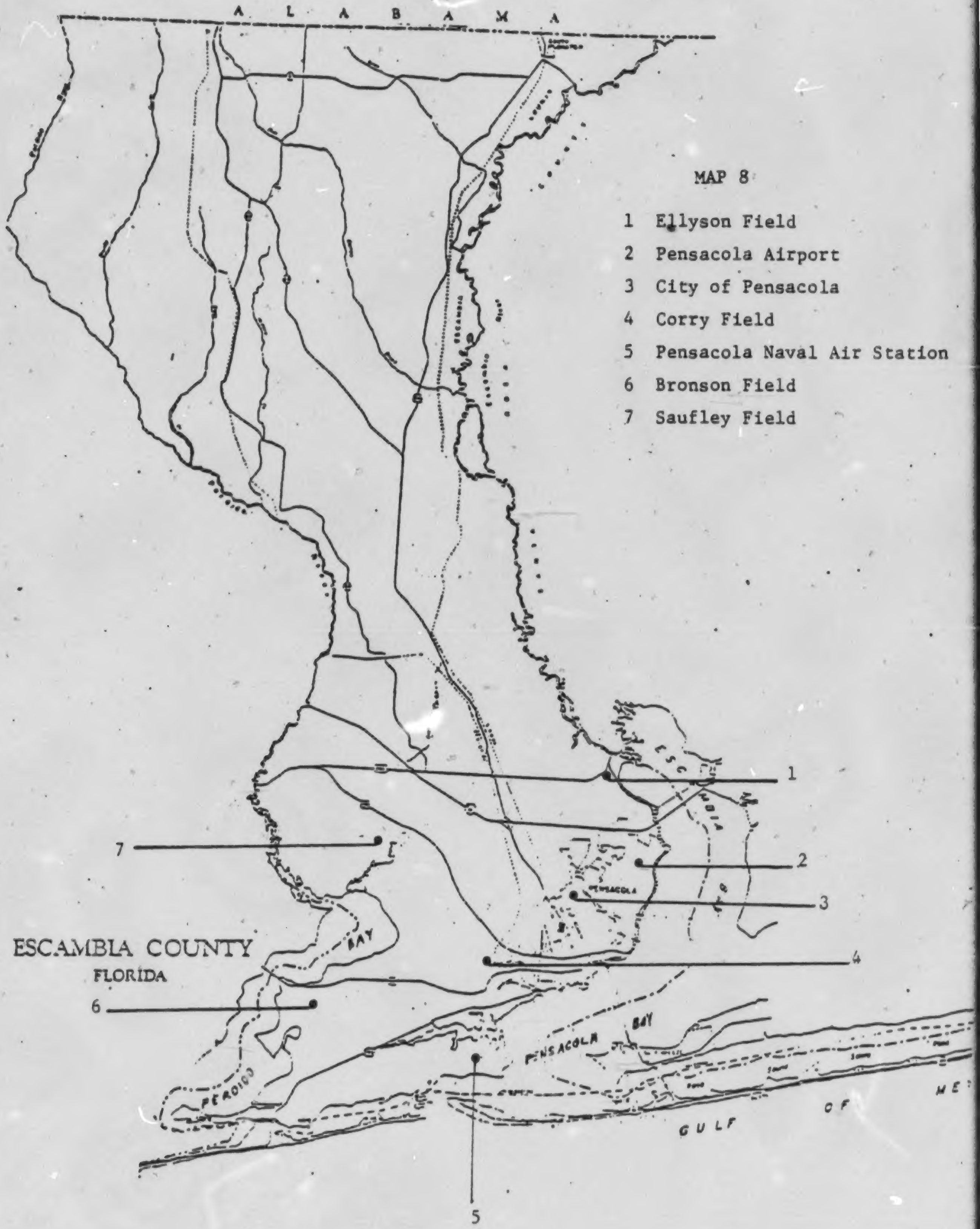
MAP 7.

FLORIDA

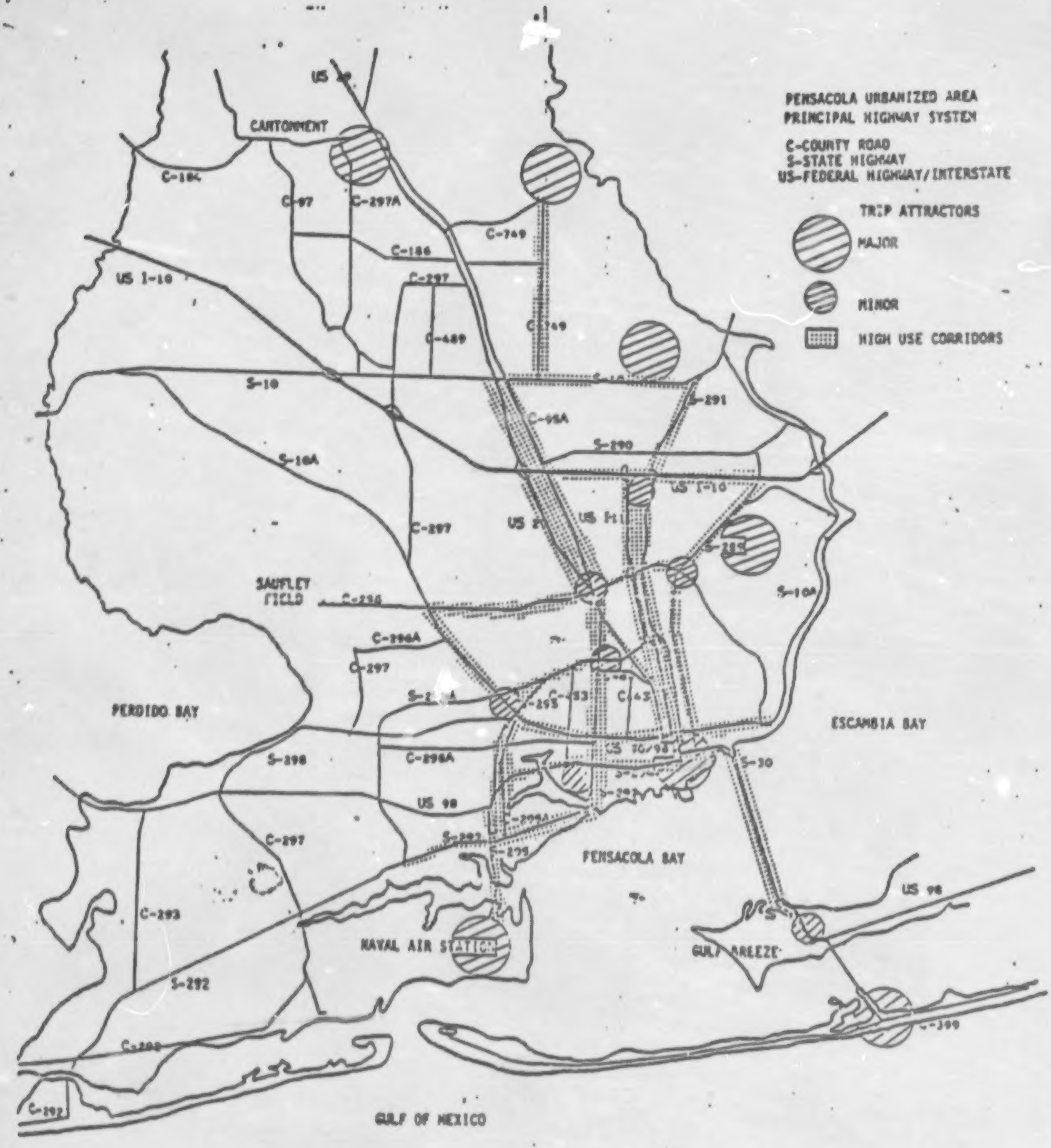

PENSACOLA
PENSACOLA
PANAMA CITY
PANAMA CITY
TALLAHASSEE
JACKSONVILLE
JACKSONVILLE
GAINESVILLE
GAINESVILLE
DAYTONA BEACH
DAYTONA BEACH
ORLANDO
ORLANDO
MELBOURNE-TITUSVILLE-COCOA
TITUSVILLE
COCOA
MELBOURNE
TAMPA-ST. PETERSBURG
CLEARWATER
TAMPA
ST PETERSBURG
LAKELAND
WINTER HAVEN
LAKELAND-WINTER HAVEN
BRADENTON
BRADENTON
SARASOTA
SARASOTA
FORT PIERCE
WEST PALM BEACH
WEST PALM BEACH-BOCA RATON
BOCA RATON
FORT MYERS
FORT MYERS
FORT LAUDERDALE-HOLLYWOOD
FORT LAUDERDALE
HOLLYWOOD
HIALEAH
MIAMI
MIAMI BEACH
MIAMI
KEY WEST
SCALE
LEGEND
Places of 100,000 or more inhabitants
Places of 50,000 to 100,000 inhabitants
Central cities of SMSA's with fewer than 50,000 inhabitants
Places of 25,000 to 50,000 inhabitants outside SMSA's
Standard Metropolitan Statistical Areas (SMSA's)

U.S. Department of Commerce
BUREAU OF THE CENSUS

Installations Affiliated with Pensacola Naval Air Station (No. 1 and Nos. 3-7); and Pensacola Airport (No. 2)


ALABAMA
MAP 8
1 Ellyson Field
2 Pensacola Airport
3 City of Pensacola
4 Corry Field
5 Pensacola Naval Air Station
6 Bronson Field
7 Saufley Field
ESCAMBIA
PENSACOLA
BAY
PENSACOLA BAY
PERDIDO
GULF OF MEX
ESCAMBIA COUNTY
FLORIDA
1
2
3
4
5
6
7

MAP 9


PENSACOLA URBANIZED AREA
PRINCIPAL HIGHWAY SYSTEM
C-COUNTY ROAD
S-STATE HIGHWAY
US-FEDERAL HIGHWAY/INTERSTATE
TRIP ATTRACTORS
MAJOR
MINOR
HIGH USE CORRIDORS
US 29
CANTONMENT
C-184
C-97
C-297A
C-749
C-186
US I-10
C-297
C-489
C-749
S-10
S-10
S-291
C-95A
S-10A
S-290
US I-10
US 29
US I-110
C-297
SAUFLEY FIELD
C-296
S-295
S-10A
C-296A
C-297
PERDIDO BAY
C-453
ESCAMBIA BAY
S-298
C-298A
US 90/98
S-30
US 98
C-297
S-292
PENSACOLA BAY
C-293
NAVAL AIR STATION
US 98
GULF BREEZE
S-292
C-399
C-292
C-292
GULF OF MEXICO

The Economy. The following tables reflect the demographic and economic trends in the Pensacola area over the past three decades:

TABLE V

Economic Development, Pensacola Area and U.S.:
Total Population and Employees By Sector, 1958-78
(numbers in thousands)

POPULATION	1960	1970	1978†	Percent Change, Earliest-Most Recent Year
Escambia County	173.8	205.3	225.6	29.8
Pensacola SMSA	203.4	243.1	275.5	35.4
U.S.	179,323.2	204,335.0	218,717.0	22.0
MANUFACTURING	1963	1972	1977	
Escambia County	12.1	12.5	11.2	-7.4
Pensacola SMSA	13.1	14.0	12.7	-3.1
U.S.	16,958.4	19,026.8	19,596.9	15.6
RETAIL*	1963	1972	1977	
Escambia County	9.1	14.1	16.7	83.5
Pensacola SMSA	10.2	15.5	18.8	84.3
U.S.	10,118.1	12,990.4	14,895.2	47.2
SERVICES*	1958	1967	1977	
Escambia County	3.0	4.1	7.3	143.3
Pensacola SMSA	3.2	4.5	8.0	150.0
U.S.	3,864.5	5,029.0	8,172.0	111.4
AGRICULTURAL*	1959	1969	1974	
Escambia County	1.1	0.7	0.6	-45.4
Pensacola SMSA	2.1	1.4	1.3	-38.1
U.S.	5,294.7	3,384.6	3,026.7	-42.8

TABLE VI

Employees by Sector as Percent of Total Employees,+
Pensacola Area and U.S.
(figures in parentheses indicate latest year
for which data is available)

	*AG (74)	MANU (77)	*RET (77)	*SERV (77)	TOTAL
Escambia Co.	1.7	31.3	46.6	20.4	100.0
Pensacola	3.2	31.1	45.9	19.8	100.0
U.S.	6.6	42.9	32.9	17.9	100.0

† Estimate.

+ Total employees is the sum of employees in each sector for the latest year for which data is available.

* Employment in these sectors is the sum of the number of establishments and the number of employees. It is assumed that there is one proprietor per establishment. (Proprietors are excluded from the data on employees.)

Source: U.S. Census

The information in Table V shows the following:

- Population in Escambia County and in the Pensacola SMSA has been increasing at a rate faster than the national average. The population in both areas increased by over 29 percent, from 1960-1978, while the population of the United States increased by 22 percent.

- The number of employees in the retail and service sectors has also increased at a substantially higher rate than the national average.

  The number of employees in the retail sector increased by over 83 percent in both Escambia County and the Pensacola SMSA; the number of retail employees in the United States increased by 47.2 percent. In the services sector, the number of employees grew by over 143 percent in both Escambia County and the Pensacola SMSA, while the number increased by only 111.4 percent in the United States.

- The number of manufacturing employees in both Escambia County and the Pensacola SMSA decreased by over three percent from 1963-77, while the number in the United States increased by 15.6 percent during this period.

- The number of agricultural employees decreased in Escambia County and the Pensacola SMSA at rates comparable to the national average.

- The information in Table VI shows that in recent years, the retail and service sectors in Escambia County and the Pensacola SMSA provide over 65 percent of the employment. In the United States as a whole, only 50.8 percent of employees work in these sectors.

The School District

Of the 40,907 children attending Escambia County schools, 7,617, or 19 percent, were connected with Pensacola Naval Air Station and Eglin Air Force Base. The vast majority of these base-connected children[191] --6,904, or 91 percent--live off base. Of the children living off base, 3,324, or 48 percent, were the children of military parents. The table shows the composition of base-connected children in Escambia County:

---

[191] "Base-connected" children are those who live with parents either living on, working on, or both living and working on a military base. There are two types of base-connected children: an "A" child lives with a parent who both lives and works on a military base; a "B" child lives with a parent who either lives or works (but not both) on a military base. Base-connected children do not include those federally-connected children whose parents live, work, or live and work on Federal installations other than military bases.

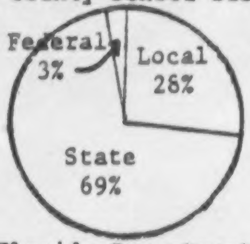
Composition of Base-Connected Children,
Escambia County School District, FY 1979

Total ADA	40,907
Base-connected ADA	7,617
"A" Children	713
Military "B" Children	3,324
Civilian "B" Children	3,580

Source: SAFA

As noted, Escambia County relies heavily on State funding for its general education revenues: the State provided $42.1 million, or 69 percent of the agency's general revenue in fiscal year 1979. This is a substantially higher proportion than the State average of 56 percent. The agency raised $16.7 million, or 28 percent of its revenue, primarily from real property taxes, but also from personal property taxes on business and from interest earned on investments. Impact aid funding of $1.9 million for all Federal activities accounted for three percent of the revenue. The following chart illustrates this relationship:

Sources of Education Revenue,
Escambia County School District, FY 1979



Source: Florida Department of Education

Real property tax revenues, the most important type of local revenue, came from diverse sources. Residential sources provided 59 percent of the real property tax revenue. Another 17 percent came from commercial sources, with the remaining 24 percent originating primarily from industry, but also from agriculture.

Despite the diversified local property tax base, assessed valuation per pupil in the district was extremly low. In 1979, it was $46,266, which was 56 percent of the State average and about half the average in the non-impacted districts determined by the Florida Department of Education to be comparable to Escambia County. Escambia County's mill rate was eight mills, the highest allowed by State law.

The Base

The Pensacola Naval Air Station complex consists of seven sites in Escambia County totaling about 10,000 acres, and one site in Santa Rosa County. The principal site is the Naval Air Station on Pensacola Bay, which covers almost 6,000 acres; the other important sites in Escambia County include Bronson (1,100 acres), Saufley (900), Ellyson (600), and Corry (600).

The Pensacola complex employed 22,364 people, including 12,913 military employees, with a total payroll of $330 million. Over the last two decades, the number of employees at the base has grown by 78 percent. The highest increase took place during the 1960's, and most of the growth can be attributed to the surge in the number of military personnel. The number of employees has leveled off during the past decade, as the following table shows:

Number of Employees at Pensacola Naval Air Station, 1960-1979*

	1960	1970	1979
Total employees	13,150	22,612	22,364
Military	7,032	14,758	12,913
Civilian	6,118	7,854	9,451

* These figures do not include Eglin Air Force Base employees, contractors, or Non-Appropriated Fund employees.

Source: Department of Defense

Of the 22,364 employees, 6,189, or 28 percent, lived on base and therefore paid no property taxes on their residences. Of those employees living off base, 75 percent lived in the metropolitan area. Of the off-base employees, 66 percent lived in Escambia County and paid residential property taxes to the local educational agency.

Civilian employees of the base had an average annual income of over $22,000, while military employees earned $9,500 a year. The average non-base salary in the area was $12,000 a year.

Of the 12,153 employees living off base in the metropolitan area, 5,058, or 42 percent, were military. Military employees have the option of shopping on base. On-base facilities sold $42 million worth of goods in 1979: the PX sold $24 million, the commissary $15 million, and clubs and liquor stores nearly $3 million.

Some children who attended Escambia County public school in 1979 had parents who worked at Eglin Air Force Base. The number of Eglin employees living in Escambia County was 311, which was less than two percent of the number of employees from the Naval Air Station.

Results for Escambia County School District

The following table summarizes the results of the economic impact study for the Escambia County School District with respect to the Pensacola Naval Air Station.[*]

	Per Pupil Expenditures	Expenditures Base-Attributable (millions $)	Alternative Use (millions $)
Comparable districts	$1,408	$12.9-$15.3	$13.9-$15.9
State average	$1,421	$13.1-$15.4	$14.0-$16.0

Revenues

Source		
Property taxes	$1.8-$2.2	$4.3-$4.6
State aid	$10.3-$12.1	$9.4-$11.0
Miscellaneous "other" local revenue	$0.5-$0.6	$0.6-$0.7
Total	$12.6-$14.9	$14.3-$16.3

Burden

Net Burden = (Current burden - Alternative burden)
= (Current expenditures - Current revenues)
- (Alternative expenditures - Alternative revenues)

	Lower Bound (million $)	Upper Bound (million $)
Comparable PPE:	(12.9-12.6) - (13.9-14.3) $0.7	(15.3-14.9) - (15.9-16.3) $0.8
State avg. PPE:	(13.1-12.6) - (14.0-14.3) $0.8	(15.4-14.9) - (16.0-16.3) $0.8

Impact Aid entitlement accounted for by Pensacola Naval Air Station and Eglin Air Force Base = $3.2 million.

[*] Figures rounded for clarity. Those used in text are midpoints.

According to the results of the study, Escambia County School District suffered a burden of between $0.7 and $0.8 million from Pensacola Naval Air Station in 1979. Children connected with the Naval Air Station and Eglin Air Force Base accounted for $3.2 million of the Public Law 874 entitlement for Escambia County in 1979. The burden determined by the study was about $2.5 million below the entitlement for Escambia County.

Escambia County is the only district of the four studied where the burden differed substantially from the Public Law 874 entitlement. In the three other cases, the burden was the result primarily of a shortfall in property tax revenue paid by base-attributable employees.[192/] In Escambia County, however, though base-attributable employees failed to contribute as much property tax per pupil as other employees in the district, the State compensated for most of the difference. State aid to Escambia County comprised a substantially higher portion of revenue than it did for the other local educational agencies the Commission studied. Consequently, the burden imposed by Pensacola Naval Air Station complex was mitigated by substantial payments from the State.

The Public Law 874 entitlement formula, as applied to Escambia County, assumed that State revenues comprised 50 percent of total educational revenue in 1979. In fact, however, Florida contributed $42.1 million, or 69 percent, of Escambia County's total revenue in fiscal year 1979. The State share of the costs of educating base-attributable children was even higher. The study found that the cost of these children was $14.2 million and that State aid accounted for $11.2 million of these costs. State aid, therefore, financed 79 percent of the current expenses of the children associated with the Pensacola naval installations.

State aid was relatively high to Escambia County and due to base-attributable children within the county because the formula increased aid as assessed valuation per pupil decreased. The assessed valuation per pupil was lower in Escambia County than it was, on average, in the rest of Florida. Furthermore, the assessed valuation per pupil accounted for by base-attributable families in Escambia County was even lower than that accounted for by the other families in the district. The Statewide average was $82,058 in 1979; Escambia County's assessed valuation per pupil was $46,266 that same year--a difference of 44 percent. The study found that base-attributable families accounted for $26,089 in assessed valuation per pupil, an amount substantially lower than that in Escambia County because the place of employment of these families--Pensacola Naval Air Station complex--was tax-exempt and not assessed at all.

Escambia County's burden of $0.7 million came about for two reasons: the State aid did not compensate for all the shortfall in property tax revenue, and, if the base were to shut down, State and local revenue generated by the site would exceed the education costs of the schoolchildren associated with that site. Though the State aid formula, according to the study, financed 79 percent of the cost of base-attributable children, it did not compensate for the entire shortfall in

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[192/] "Base-attributable" refers to the sum of "base-connected" and "base-induced," and applies to employees, their schoolchildren, their incomes, and their families. It also applies to expenditures and to revenues of the local educational agency that have been accounted for by base-attributable families. "Base-induced" refers to those employees (as well as to their schoolchildren and income) in the commercial sector who were hired to accommodate the spending of base employees.

in property tax revenue. Base-attributable families contributed $199 per pupil in property tax revenues--substantially less than the $403 per pupil contributed by the other families in Escambia County. The State partially made up this difference by providing $1,117 per base-attributable child, which was more than the $1,002 it provided to other children in the district. Together, the sum of revenues from the State, property taxes paid by base-attributable families, and miscellaneous "other" local revenue from these same families ($58 per pupil) failed to cover the total cost of educating base-attributable schoolchildren. (See chart below.) These revenues were $0.4 million less than expenditures.

Per-Pupil Revenue Contributed by Base-Attributable and and Non-Base-Attributable Families, By Source, 1979

	Base-Attrib.	Non-Base-Attrib.
Property Tax Revenue/ADA	$ 199	$ 403
State Aid/ADA	$1,117	$1,002
Miscellaneous "Other" Local Revenue/ADA	$ 58	$ 56
Total	$1,374	$1,461

In addition, alternative use of the site would have generated more revenue than it would have imposed in expenditures on the local educational agency. The assessed valuation per pupil of the site would nearly double, so that if the mill rate were to remain at eight mills (as the model assumes), the property tax revenue generated by the site would increase substantially. The study found that the site occupied by the naval base would have a per-pupil assessed valuation of $50,994, nearly double the $26,089 currently associated with the base. The reason, of course, is that much of the base would become taxable. (See Attachment II, *infra*.)

Though the amount of State aid to Escambia County would be reduced under alternative use, it would not decrease enough to offset the increase in property tax revenue.

The State aid triggered by the site would decrease to $10.2 million, or 67 percent of revenue attributable to the site. The percentage of revenue comprising State aid would still be above the average for other local educational agencies in the State (which is 56 percent), because the assessed valuation per pupil of the site, which would be $50,994, is below the Florida average of $82,058. The assessed valuation for the site under alternative use would be relatively low because both the port and airport, which would be operated by the municipal government, would be tax-exempt. (See Attachment II, *infra*.) The sum of the increased property tax revenue from the site, the still substantial State aid triggered by the site, and the miscellaneous "other" local revenues contributed by families associated with the site would exceed the expenditures attributable to the site by $0.3 million.

The divergence between the burden of $0.7 million determined by the Commission study and Escambia County's entitlement of $3.2 million under the Public Law 874 formula can be traced chiefly to the large State role in education in Florida. The Commission study found that the State financed 79 percent of the costs of educating base-attributable children in Escambia County. The Public Law 874 entitlement formula, however, compensated Escambia County on the basis that the State paid 50 percent of these costs (Escambia County uses one-half the national average per-pupil expenditure to determine its local contribution rate). This difference of 29 percentage points regarding the State role accounted for most of the disparity between the Public Law 874 entitlement and the study's determination of burden.

Escambia County's local contribution rate (LCR) was $780 in 1979--reached by use of the one-half national average per-pupil expenditure method provided in Public Law 874 for calculating LCR. The Commission found that substitution of its own data into the Public Law 874 formula resulted in a per-pupil local contribution of $297.

The following table shows how the local contribution rate was determined for Escambia County under current law and what that rate would have been if the study's findings were used:

Local Contribution Per Pupil and LCR, Determined Using
Commission Data and P.L. 874 Data, Respectively

	Per-Pupil Expenditure	Local Share	Local Contribution Per Pupil/LCR (PPE x Local Share)
Commission*	$1,414	0.21	$297
P.L. 874	$1,560+	0.50†	$780

* The Commission figures represent the midpoint in the range of data determined and used by the study.
+ Average per-pupil expenditure, United States, FY 1979.
† Study's determination of non-State share of costs of base-attributable children.

The per-pupil local contribution determined by Commission data was $297, or 62 percent less than the Public Law 874 local contribution rate of $780 for Escambia County in 1979. The source of most of this disparity is the difference in local share, and not the difference in the per-pupil expenditure figures. The difference in per-pupil expenditures accounted for only six percent of the disparity between per-pupil local contribution and LCR. Public Law 874 permits local educational agencies to use the national average of per-pupil expenditures, while the Commission study uses the State average and the average of the non-impacted districts determined by the State to be comparable to Escambia County. If the Commission had used the national average, as Public Law 874 did, its determination of per-pupil local contribution would still have been only $328—an increase just $31 over the per-pupil local contribution actually found by the Commission. Thus, the difference in the use of per-pupil expenditure figures accounted for only a small portion of the disparity in local shares.

The source of most of the disparity between the Commission's per-pupil local contribution and the LCR under Public Law 874 was the difference in the determinations of local share. The local share of base-attributable expenditures--which amounted to 21 percent of total expenditures--was lower than the local share of 50 percent provided by the Public Law 874 formula. The Commission estimated the local share by first determining the current expenditures imposed by base-attributable children and the State revenue triggered by base-attributable children. The Commission then divided the difference between the two figures by base-attributable current expenditures to arrive at local share. [Local Share = (Expenditures, Base-Attributable - State Revenues, Base-Attributable) ÷ Expenditures, Base-Attributable.] The Impact Aid law allows districts to assume local shares of 50 percent of State or national average per-pupil expenditures; Escambia County used one-half the national average.

Thus the Commission figure for per-pupil local contribution was substantially lower than the LCR used in computing Escambia County's Public Law 874 entitlement. This difference does not completely explain, however, the ultimate difference between the Commission-determined burden and the entitlement for Escambia County. The Commission's per-pupil local contribution of $297 was 38 percent of the LCR of $780 under Public Law 874; however, the Commission-determined burden of $0.7 million was 22 percent of the $3.2 million entitlement for Escambia County. While the Commission's per-pupil local contribution was substantially smaller than the LCR it was not sufficiently small to explain fully the discrepancy between the burden and the entitlement for Escambia County. The other component of the entitlement formula has to be considered if this discrepancy is to be fully explained.

The Public Law 874 formula determines entitlement by multiplying the local contribution rate by the weighted number of federally-connected[193/]

193/ "Federally-connected" children are those who live with parents either living on, working on, or both living and working on Federal property. There are two types of federally-connected children: an "A" child lives with a parent who both lives on and works on Federal property; a "B" child lives with a parent who either lives on or works on (but not both) Federal property. Federally-connected children include base-connected children as well as children whose parents live on, work on, or both live and work on Federal installations other than military bases.

children. The weights assigned to each child differ on the basis of the statute's estimate of the relative property tax burden imposed by each child's family.[194] The different weights reflect the property tax contributions from places of residence and employment by the families of different types of children.

The Commission considers these property tax contributions from base-attributable families but also takes into account their contributions to commercial property tax revenues and miscellaneous "other" local revenues. If the Commission model were to incorporate these revenue contributions into the Public Law 874 formula, the effect would be to lower the weights applied by Public Law 874 to measure burden. The lower weights that the Commission model would apply would reduce the burden of the base.

To determine just how large a role the relative revenue burdens--as measured by the weights--played in explaining the Commission burden, the Commission estimated entitlement by inserting its own data into the Public Law 874 entitlement formula. The two inserted variables--somewhat different from those actually applied to Escambia County by the formula--were the Commission's determination of the local contribution per base-attributable child and the number of base-attributable children using the weights assigned to these children by Public Law 874. In determining the number of children, the Commission included base-induced[195] children in the district as well as children directly connected to the base. The Commission incorporated induced employees and their schoolchildren into all calculations of base effects on expenditures and revenues.

A comparison of the determinations of entitlement using Commission data and data provided under Public Law 874 yielded the following results:

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[194] Children of military parents living on base are assigned a weight of 1.0 because their parents contribute no property taxes to the local educational agency; children of military parents living off base, on the other hand, are assigned a weight of 0.5 on the ground that their parents pay property taxes on their residence, which are assumed to account for 50 percent of all property tax revenues. Other weights are assigned to pupils who are the children of civilian employees, and their weights differ according to whether their parents live in or out of the county. Finally, still other weights are assigned to those children participating in special education programs. The Commission assigned induced children a weight of 0.45, the same weight that is given by Public Law 874 to children of civilian employees working in the county.

[195] See note 192, supra, regarding the term "base-induced."

Entitlement, Determined with P.L. 874 Data and Commission Data (Using P.L. 874 Weights)

Public Law 874		Commission	
Local Contribution Rate	$780	Local Contribution Per Base-Attributable Child	$297
Weighted Number of x Base-Connected Children	4,189	Weighted Number of x Base-Attributable Children	5,242
= Entitlement	$3.2 million	= Entitlement	$1.6 million

These calculations show that the variables in the Public Law 874 formula explain a great deal of the disparity between the Commission's burden and the entitlement for Escambia County, but not nearly all of it. These variables with Commission data inserted would yield a burden of $1.6 million, substantially below the entitlement of $3.2 million, which was arrived at with Public Law 874 data. Variables other than those considered by the formula, however, explain the difference between the $1.6 million burden and the ultimate Commission-determined burden of $0.7 million.

Because the budget surplus that would result under alternative use of the base sites would be only $0.3 million, it is clear that the bulk of the difference stems from the contributions of base-attributable employees to local revenues that have not been captured by the weights used in the formula. The contributions of base-attributable employees to commercial property tax revenue and miscellaneous "other" local revenue--contributions not taken into account by the weights in the formula, but considered by the Commission--would have the effect of lowering the weights applied by the formula to reflect Federal burden. The contributions of base-attributable employees in Escambia County are likely to be particularly large both because Escambia County is the commercial center of the Pensacola SMSA and because miscellaneous "other" local revenues are substantial in Escambia County.

The extent of the concentration of commercial activity in Escambia County can be seen from a comparision of the retail sales in Escambia County with the sales in the Pensacola SMSA. Retail sales and taxable services in Escambia County totalled $1,118 million in 1979--an amount comprising 89 percent of all sales and services in the Pensacola SMSA. The civilian employees of the Pensacola Naval Air Station complex, who constituted 42 percent of all base employees, were, therefore, more likely to do 89 percent of their shopping in Escambia County, according to the model. These purchases resulted in commercial property tax revenues for the local educational agency that were measured by the model but were not taken into account by the weights in the entitlement formula.

Miscellaneous "other" local revenues in Escambia County consisted of an assortment of revenues from investments, fees, and charges. The most important source was interest earned on investments by Escambia County, which totaled $1.0 million in 1979. This "other" local revenue accounted for 14 percent of Escambia County's locally-raised revenue in 1979. The model took into account base employees' contributions to these revenues in measuring the burden of the base.

The Commission's estimate of burden was far below Escambia County's entitlement under Public Law 874 primarily because the Commission's estimate of the State share in financing the current expenditures of base-attributable schoolchildren was substantially higher than the assumption about State share that was made in the Public Law 874 formula. This meant that the costs incurred by the local educational agency as a result of the Federal base were lower in the Commission model than according to the assumptions of the entitlement formula. The Commission found that the State of Florida stepped in to finance much of the education cost. The Commission estimated that the State paid 79 percent of the costs of base-attributable schoolchildren in Escambia County, so that the local share of these expenditures was 21 percent. The Public Law 874 formula, in providing a local contribution rate of one-half the national average per-pupil expenditure, assumed that the local share was 50 percent.

The other principal factor that lowered the Commission's estimate of burden was the Commission's consideration of base-attributable employees' contributions to commercial property tax revenues and to miscellaneous "other" local revenues. The entitlement formula applied weights that estimated the contributions of base employees to residential property taxes. Though the weights do not estimate commercial property taxes or miscellaneous "other" local revenues, the effect of the Commission's consideration of base employees' contributions to these additional revenues was to lower the Commission's estimate of the burden imposed on Escambia County by the Pensacola Naval Air Station.

Results from Alternative Use

The study reckoned that under alternative use, the amount of revenue contributed by employees associated with the site would have been slightly more than the expenditures that their schoolchildren required. The revenues added by employees associated with the sites would have been $15.3 million; expenditures associated with educating the children of these employees would have been $15.0 million. Revenues would therefore have exceeded expenditures by $0.3 million.

The amount of expenditures and revenues under alternative use would be higher because under alternative use both the number of employees and the incomes attributable to the site would increase by nearly 10 percent. (See Attachment II, infra.) If Pensacola Naval Air Station complex were to shut down, about 35 percent of the land on the sites used by the base would be used for industrial purposes and 15 percent would be occupied by residences (Most of the remainder of the land would be vacant.). The number of employees who worked and lived in the Escambia County School District would increase.

The expenditures imposed on the local educational agency by the site would increase as the number of children associated with the site increased to 10,616. With a per-pupil cost of $1,414, the local educational agency would have had to pay $15.0 million to educate children associated with the site.

Approximately 29 percent of the revenue generated by the site, or 4.5 million, would have come from local property taxes paid primarily from industrial and residential sources. While this percentage would exceed the 14 percent share of revenue paid by base-attributable employees from property tax revenue today, it is lower than the average in districts throughout the State. Property tax revenues comprise 38 percent of local educational agencies' general fund revenue throughout Florida. The site would contribute a relatively small share of the property tax revenue under alternative use because most of its industrial land would be tax-exempt. Nearly 2,000 acres of the Naval Air Station complex would most likely be used, if the base were to shut down, for a municipally-owned airport and an expanded, municipally-owned port. The chief sources of property tax revenue would be an industrial park and the residences of employees who work at the site.

State aid would account for $10.2 million of the site's revenue, or 67 percent of total revenue. This would be about $1 million less than the local educational agency now receives from the State as a result of the base. Under alternative use, the local educational agency's gain in assessed valuation would more than offset the effect on the State formula of an increase in children to produce a loss of State aid.

The per-pupil amounts of categorical State aid and miscellaneous "other" local revenues, which include interest income, would be comparable under alternative use with the amounts currently contributed by the base.

ATTACHMENT I

STATISTICAL PROFILE, ESCAMBIA COUNTY SCHOOL DISTRICT, FY 1979

Summary

I. School District

Average Daily Attendance (ADA)

Total	40,907
Base	7,617
Military A	713
Military B	3,324
Civilian B	3,580

Base Employees*

Total	23,537
Military, total	13,113
Living in district, on base	4,979
Living in district, off base	4,442
Civilian, total	10,460
Living in district	6,901

Acres

Acres, district	420,480
Acres, base	10,262

II. Local Educational Agency

Per-pupil expenditure. average of comparable districts	$ 1,408
Per-pupil expenditure, State average	$ 1,421
Total Property Tax Revenue	$14,420,000
Residential sources	$ 6,489,000
Commercial sources	$ 3,335,000
Industrial & agricultural sources	$ 4,606,000
Total General Fund State Aid	$42,145,000
Miscellaneous "Other" Local Revenue	$ 2,307,000
P.L. 874 Entitlement, Pensacola Naval Air Station & Eglin Air Force Base	$ 3,151,000
P.L. 874 Payment, Pensacola Naval Air Station & Eglin Air Force Base	$ 1,818,000

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* Includes Eglin military employees living in Escambia County, Eglin civilians living in Escambia and Santa Rosa Counties, and contractors.

Current Use

I. Current Expenditures

Average personal income	$13,500
ADA/Job	0.410
Per-pupil expenditure, comparable districts	$1,408
Per-pupil expenditure, State average	$1,421
ADA, base	7,617

II. Current Revenues

TYPE OF EMPLOYEE	NUMBER		AVG. WAGES & SALARIES	
	living in district	SMSA (excl. district)	living in district	SMSA (excl. district)
Civil service	5,591	876	$22,383	$22,253
Non-Appropriated Fund employees (NAF)	709	103	$ 7,925	$ 7,925
Contractors	553	81	$11,947	$11,947
Working spouses	1,161	183	$11,947	$11,947
Military off base	4,344	616	$ 8,991	$ 8,991
Working spouses	1,516	468	$11,947	$11,947
3(b)(1) parents	48	0	$11,947	†
working spouses	8	0	$11,947	†
Military on base				
Families	915	412	$11,859	$11,859
Bachelors	4,064	998	$ 8,916	$ 8,911
Military living in mobile homes	98	0	$ 8,991	†
Working spouses*	585	183	$11,947	$11,947

† Not Applicable.

Personal Income Adjustment, base employees (except NAF)	1.13
Personal Income Adjustment, NAF employees	1.05

Net Multipliers

Civil service employees	.24 - .40
Spouses, civil service employees	.00 - .40
NAF employees	.23 - .37
Military employees	.17 - .33
Spouses, military employees	.00 - .35

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* This figure for spouses is proportionately larger because all persons living in "family quarters" are assumed to be married. Also, all persons living in "bachelors quarters" are assumed not to have wives within the county.

a. Residential Property Tax Revenue ($6,489,000)

Population, county, 1978	225,600
Population, SMSA, 1978	275,500
Personal income, county	$1,536,856
ADA, low-rent public housing	582

b. Commercial Property Tax Revenue ($3,335,000)

Percentage of personal income spent on retail goods and taxable services	59.3%
Military payroll, employees living on base and in district	$ 93,221,000
Military payroll, employees & retirees living in district	$ 161,512,000
Total on-base sales	$ 41,952,000
Total, retail sales & taxable services in Escambia County, 1979	$1,117,685,000
Total, retail sales & taxable services, SMSA, 1979	$1,258,756,000

c. General Fund State Aid ($42,145,000)

Non-categorical aid	$38,326,000
Categorical aid & miscellaneous "other" aid	$ 3,818,000

d. Miscellaneous "Other" Local Revenues (Non-Property Tax Revenues) (($2,307,000)

Total ADA, district	40,907
Miscellaneous "other" local revenue, function of ADA	$1,354,000
Miscellaneous "other" local revenue, function of local educational agency revenues (Interest income)	$ 953,000

Alternative Use

III. Alternative Use Expenditures

Average personal income	$13,500
ADA/Job	0.410
Per-pupil expenditure, comparable districts	$ 1,408
Per-pupil expenditure, State average	$ 1,421

IV. Alternative Use Revenues

	Number Acres	Avg. Tax Per Acre	Emp. Per Acre	Avg. W&S
Agricultural	893	$4.15		
Proprietors			.008	$ 6,737
Employees			.002	$ 7,563
Commercial	470	$1,400	10.2	$ 8,788
Industrial	1,200	$1,400	10.2	$16,030
Port	300	0	15.38	$16,030
Airport	1,653	0	.273	$16,030

Number of working spouses of alternative use site employees, county	1,969
Number of working spouses of alternative use site employees, SMSA, excluding district	274
Average W&S, working spouses of alternative use site employees	$11,947
Personal Income Adjustment	1.13
Net Multipliers	
Alternative use employees	.24 - .40
Alternative use working spouses	.00 - .40
Pensacola Naval Air Station, civilian employees, living in the district	6,246
Total Pensacola Naval Air Station civilian employees	9,451

a. Residential Property Tax Revenue ($6,489,000)

Percentage induced income accruing to district residents	83.5%
Population, county, 1978	225,600
Population, SMSA, 1978	275,500
Personal income, county	$1,536,856
ADA, low-rent public housing	582

b. Commercial Property Tax Revenue ($3,335,000)

Percentage of personal income spent on retail goods and taxable services	59.3%
Total, retail sales & taxable services in Escambia County, 1979	$1,117,685,000
Total, retail sales & taxable services, SMSA, 1979	$1,258,756,000

c. General Fund State Aid ($42,145,000)

Non-categorical aid	$38,326,000
Categorical and miscellaneous "other" State aid	$ 3,818,000

d. Miscellaneous "Other" Local Revenues (Non-Property Tax Revenues) ($2,307,000)

Total ADA, district	40,907
Miscellaneous "other" local revenue, function of ADA	$1,354,000
Miscellaneous "other" local revenue, function of local educational agency revenues (Interest income)	$ 953,000

ATTACHMENT II

BASIS FOR PROJECTIONS OF ALTERNATIVE SITE USE

Estimates of how the sites occupied by the Pensacola Naval Air Station complex would be used if the base were to close down were made by the following experts on local land use and history:

Duncan Bushart, West Florida Regional Planning Council
Peter DeVries, Pensacola City Planning Department
John Jones, Escambia County Appraiser
Leora Sutton, Escambia County Historical Society
Ike Wilson, Escambia County Planning Department

The Commission examined the alternative use of Pensacola Naval Air Station headquarters, and three affiliated stations scattered throughout southern Escambia County. The experts' projections about alternative site use also included the Pensacola Municipal Airport, located 11 miles from the Naval Air Station. The important sites that would be involved if the Navy were to close the Naval Air Station complex, according to the local experts, included the following:

Pensacola Naval Air Station (5,821 acres)
Pensacola Municipal Airport (1,200 acres)
Bronson Field (1,908 acres)
Ellyson Field (620 acres)
Corry Field (604 acres)

The most important events that would be triggered by the base closure would involve the Naval Air Station and the Pensacola Municipal Airport. The experts felt that closure of the base would substantially alleviate the demand for land in southern Escambia County. This demand is increasing both because the residential population of Escambia County is rapidly growing and because trade firms want to use the facilities at the well-situated Pensacola port.

Less land is currently developable in Escambia County than would be available for development if the base were to close down. Facilities owned by the city of Pensacola are duplicated on the base: like the city of Pensacola, the base has both a port and an airport, but both facilities are restricted to use by the U.S. Navy. These facilities are fewer than 12 miles from the port and airport run by Pensacola. Evidence of the increasing demand for residential land in Escambia County is provided by population data. The population of both Escambia County and the Pensacola SMSA (which includes Escambia and Santa Rose counties) has been increasing at a rate faster than the national average. The population of Escambia County has grown from 173,800 in 1960 to 225,600 in 1978, an increase of 29.8 percent. The population of the Pensacola SMSA has also grown--from 203,400 in 1960 to 275,000 in 1978, a 35.4 percent growth. The rate of increase in the United States, meanwhile, was only 22.0 percent between 1960 and 1978.

These population gains were concentrated in the residential areas surrounding the Pensacola Municipal Airport, which is located in a suburban area northeast of the city. The largest population increases in Pensacola from 1970-78 took place in census tracts 10-13, which are adjacent to the airport; census tract 14, which begins less than one mile west of the airport; and census tract 35, which begins less than one mile north of the airport.196/

The pressure resulting from the demand for residential land around the Pensacola Municipal Airport has resulted in two lawsuits filed by residents against the city. In 1978, the Gonzalez family, which owns land east of the airport, filed a suit against the city because the family wanted to sell its land to be developed rather than have it used as a buffer zone against airport noise. The city ended up buying the 60-odd acres and is using it as a buffer zone. In a similar case, the Baars Estate, which owns land to the south of the airport, also wanted to sell its land for development purposes, rather than have it used as a buffer zone. That case, filed in 1977, is still pending.

Firms involved in export or import have also been interested in acquiring land in Escambia County. They have been particularly interested in using the facilities at and near the Port of Pensacola, which is located eight miles north of the entrance to the Gulf of Mexico. These firms have sought to locate near the port to take advantage of the port's desirable location and the high quality of the labor force in Pensacola.197/

The port has not been able to accommodate all the requests for use of port facilities because the warehouses are filled to capacity or because the port is not deep enough to service some of the large ships. The port has been not been able to expand, according to the experts, because it is surrounded on all sides by residential and commercial developments. In addition, the two railroad lines that transport cargo from the port--the San Francisco and the Louisville & Nashville railroads--delay downtown traffic with their present volume.

Consequently, the port has had to turn down numerous requests from firms interested in using its facilities. The Port Authority of Pensacola turned away 78,000 tons of cargo in fiscal year 1980 because of insufficient capacity. In addition, inquiries from a half-dozen major corporations seeking to use the facilities have been rejected by the Port

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196/ Source: Pensacola Planning Department.

197/ A study by the A.T. Kearney consulting firm of the desirability of the Pensacola area as a business location listed the assets of the area: the quality of the labor force, the supply of semi- and unskilled labor, the availability of industrial and vocational training, the low level of union activity, expanding transportation services, and the quality of life.

Authority in the last three years. These firms, which have included coal exporters, grain companies, and manufacturers of rail cars, required warehouse space that the port could not provide.

If the Naval Air Station were to be sold, the local experts maintain, both the residential demand for land at the Pensacola Municipal Airport and the demand by firms for use of the Pensacola Port could be satisfied. The naval airport has facilities superior to those of the muncipal airport, they say, and transfer of the naval airport to municipal ownership would enable residential development on the current municipal airport. Sale of the naval base to the city of Pensacola would supplement the supply of port facilities, provide a port deep enough to accommodate ships too large for the current municipal port, and alleviate the congestion at the Port of Pensacola.

The current municipal airport is located five miles northeast of downtown Pensacola, on Escambia Bay. Its 7000-foot runway needs to be expanded by 1,000 feet, according to a long-range plan drawn up by the city. The naval airport has a runway of 11,000 feet--4,000 feet longer than the runway at the municipal airport. The buffer zone between the municipal airport and the adjacent residences is not as large as that provided at the naval airport; in fact, the noise level in some residential areas exceeds the 75 decibels allowed by the Department of Housing and Urban Development, according to the local experts. They feel that this level of noise may eventually result in lawsuits against the city by Pensacola residents.

The naval port, if transferred to municipal control, would ease the burden on the facilities of the current municipal port. The naval port is located right at the entrance to the Gulf of Mexico, eight miles south of the municipal port. It is better sheltered from the elements than is the municipal port, according to the local experts. This is a critical asset in Pensacola because thunderstorms occur frequently in the area, and hurricanes can be expected once every seven years, according to the Pensacola Planning Department. The fact that the naval port is "landlocked," according to Leora Sutton, affords it better protection from these hazards. In addition, the water at the naval port is deeper than that at the municipal port, permitting ships with larger capacity to dock.

Closure of the Naval Air Station Headquarters would probably result not only in the transfer of airport and port facilities to municipal use, but also in the sale of the rest of the station. The choice land near the naval port would become available, probably for use by trade and industrial firms who have been unsuccessfully seeking access to the facilities at the Pensacola municipal port. The local planners agreed that 1,200 acres near the naval port would probably be set aside for use as an industrial park under alternative use because of the proximity of the site to the port and because there are no environmental obstacles at the site to prohibit such use.

The presence of the airport on the site would probably prevent major residential development on the site, the planners felt, despite the high demand for housing in the Pensacola area. The property on the western part of the base, however, would be sufficiently buffered from airport noise to permit development for residential use. The natural amenities of the waterfront, the planners agreed, would be conducive to the development of about 150 acres for middle- and upper-income housing.

Alternative use of facilities that would be affected by closure of the Naval Air Station Headquarters is summarized below:

Naval Air Station Headquarters (5,821 acres):

28% Municipal Airport (1,650 acres)
5% Municipal Port (300 acres)
21% Industrial Park (1,200 acres)
43% Buffer Zone (2,521 acres)
3% Residential (150 acres)

Pensacola Municipal Airport (1,200 acres):

100% Residential (1,200 acres)

Pensacola Municipal Port (68 acres):

100% Municipal Port (68 acres)

The projections by the local experts about how the three fields affiliated with the Pensacola Naval Air Station Headquarters would be used if the base were to close include the following:

Bronson Field (1,098 acres)

75% vacant (823 acres)
25% residential (275 acres)

Bronson overlooks Perdido Bay on the western border of Escambia County, six miles from the Naval Air Station Headquarters and 11.5 miles from downtown Pensacola. It is currently used for aviation training and has few facilities other than a landing strip and several water tanks. Most of the field is marshy and susceptible to flooding, according to the local experts, so that it would probably not be developed. The Bronson waterfront, however, offers desirable views of Perdido Bay, so that this acreage would probably be developed for residential use, the experts say. Similar waterfront across Perdido Bay has been developed for condominiums, and the demand for middle- and upper-income housing in Escambia County would also probably result in the development of condominiums on the Bronson site, the experts feel.

Ellyson Field (620 acres)

76% commercial (470 acres)
24% vacant (150 acres)

Ellyson is located on Escambia Bay, 11 miles north of the Pensacola Naval Air Station, and six miles north of downtown Pensacola. Ellyson was declared surplus by the Navy in 1979 and turned over to the U.S. General Services Administration (GSA). The GSA is currently negotiating the sale of the site to the city of Pensacola, which wants to use it as a commercial park. The infrastructure on the current site includes shops, office buildings, recreational facilities, and hangars.

While the local experts agreed that most of the site would be used as a commercial park, they felt that the low elevation of the northeast sector and resulting drainage problems would probably preclude development of that area.

Corry Field (604 acres)

90% residential (544 acres)
10% vacant (60 acres)

Corry is located in suburban Pensacola, two miles north of the Naval Air Station and four miles west of downtown Pensacola. Corry is currently used by the Navy to train students in cryptology, electronic warfare, and photography. Its facilities include housing, schools, a hospital, and recreation facilities.

The local experts agreed that most of Corry Field would be used for residential purposes, primarily because it is situated amid a growing residential area where demand for low- and middle-income housing exceeds supply. Corry is bordered on the northern, eastern, and southern sides by dense residential housing; the land bordering the western side--also residential--is not as densely inhabited because it is primarily swampland. The westernmost part of Pensacola, about one mile from Corry, recorded the fastest population growth of Pensacola's 13 central and older city census tracts from 1963-70, according to the Pensacola City Planning Department. The local experts felt that the southern portion of Corry would probably remain vacant to allow drainage of rainwater.

4) Chambersburg Area School District, Chambersburg, Pennsylvania

Introduction

The Chambersburg Area School District is administered by an independent local educational agency that generates most of its revenue from the local property tax. Over 20 percent of its children are federally-connected;[198] the vast majority of them are the children of civilians who work at the Letterkenny Army Depot in the northern part of the district. Chambersburg's Impact Aid entitlement accounted for by children of Letterkenny employees was $0.7 million in fiscal year 1979, and its payment was $0.4 million that year.

The Area

Geography. The district is located in the heart of predominantly rural Franklin County, which lies on the southern border of Pennsylvania in the center of the State. (See Maps 10 and 11, infra.) The town of Chambersburg, which is the capital of Franklin County, is located in the district. Chambersburg is the most populous town in the county (it has 16,500 people) and the commercial center of the area.

Chambersburg is about one hour's drive from Pennsylvania's capital, Harrisburg, to the northeast and Hagerstown, Maryland to the south. Downtown Chambersburg is five miles south of Letterkenny. Letterkenny occupies about 45 percent of the land area within the district.

Transportation. Chambersburg is intersected by one major interstate and one Federal highway. (See Map 12, infra, for details.) Interstate 81 travels north-south, connecting Hagerstown, Maryland to the south with Harrisburg and Scranton to the northeast; Route 30 is less traveled and runs east-west from Philadelphia to Pittsburgh. Eight freight trucking terminals and three bus lines make use of these highways.

Freight train transportation is provided by ConRail and Western Maryland, which have terminals in Hagerstown and Harrisburg. The Letterkenny Army Depot operates a railroad within its boundaries that receives and ships about one-fifth of the freight volume in Franklin County.

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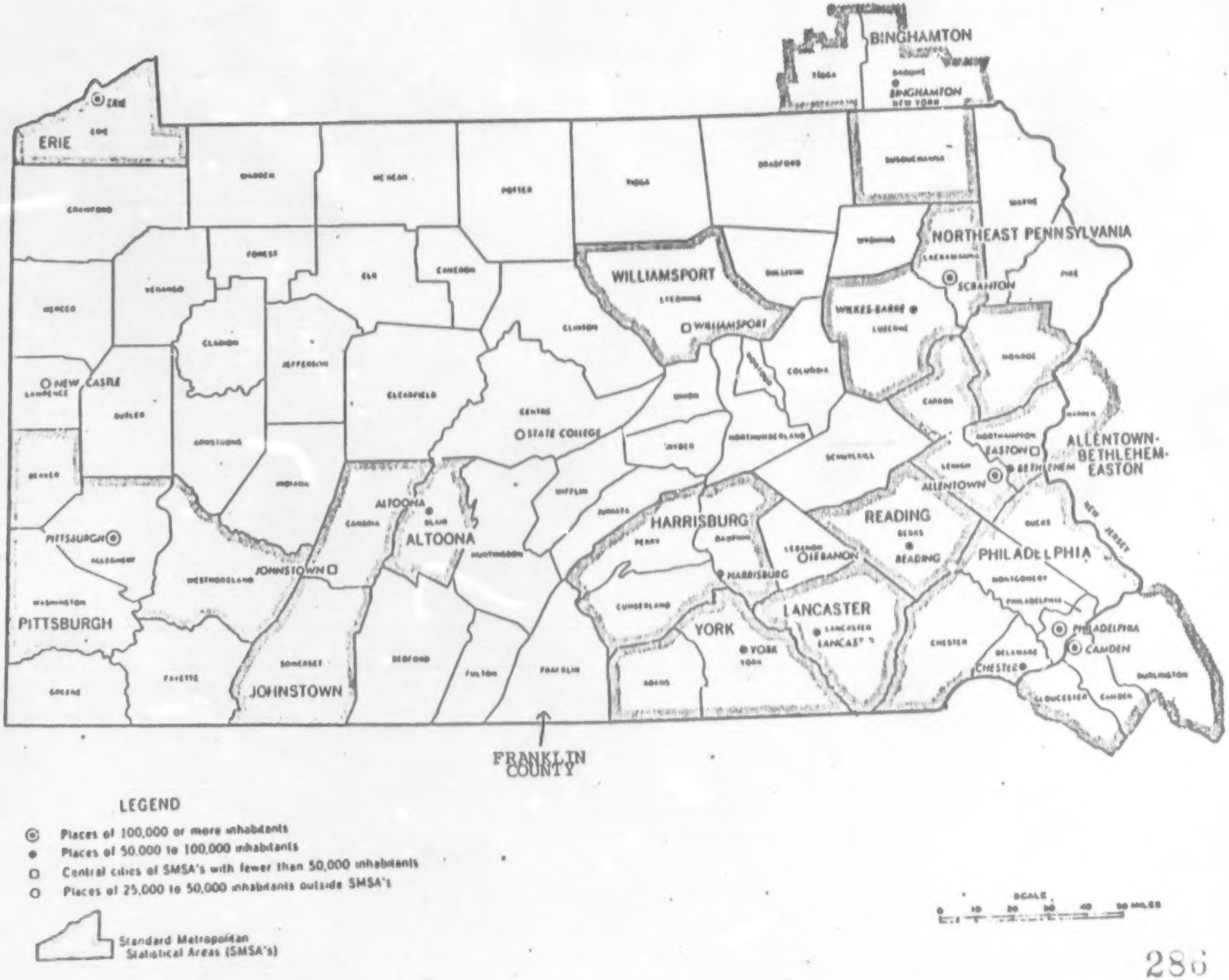
[198] "Federally-connected" children are those who live with parents either living on, working on, or both living and working on Federal property. There are two types of federally-connected children: an "A" child lives with a parent who both lives on and works on Federal property; a "B" child lives with a parent who either lives on or works on (but not both) Federal property. Federally-connected children include base-connected children as well as children whose parents live on, work on, or both live and work on Federal installations other than military bases.

MAP 10

PENNSYLVANIA


BINGHAMTON
BINGHAMTON
NEW YORK
ERIE
ERIE
NORTHEAST PENNSYLVANIA
SCRANTON
WILKES-BARRE
WILLIAMSPORT
WILLIAMSPORT
NEW CASTLE
STATE COLLEGE
ALLENTOWN-BETHLEHEM-EASTON
EASTON
BETHLEHEM
ALLENTOWN
ALTOONA
ALTOONA
PITTSBURGH
PITTSBURGH
JOHNSTOWN
JOHNSTOWN
HARRISBURG
HARRISBURG
LEBANON
READING
READING
PHILADELPHIA
PHILADELPHIA
CAMDEN
CHESTER
NEW JERSEY
LANCASTER
LANCASTER
YORK
YORK
FRANKLIN COUNTY
LEGEND
Places of 100,000 or more inhabitants
Places of 50,000 to 100,000 inhabitants
Central cities of SMSA's with fewer than 50,000 inhabitants
Places of 25,000 to 50,000 inhabitants outside SMSA's
Standard Metropolitan Statistical Areas (SMSA's)
SCALE
0 10 20 30 40 50 MILES

U.S. Department of Commerce
BUREAU OF THE CENSUS

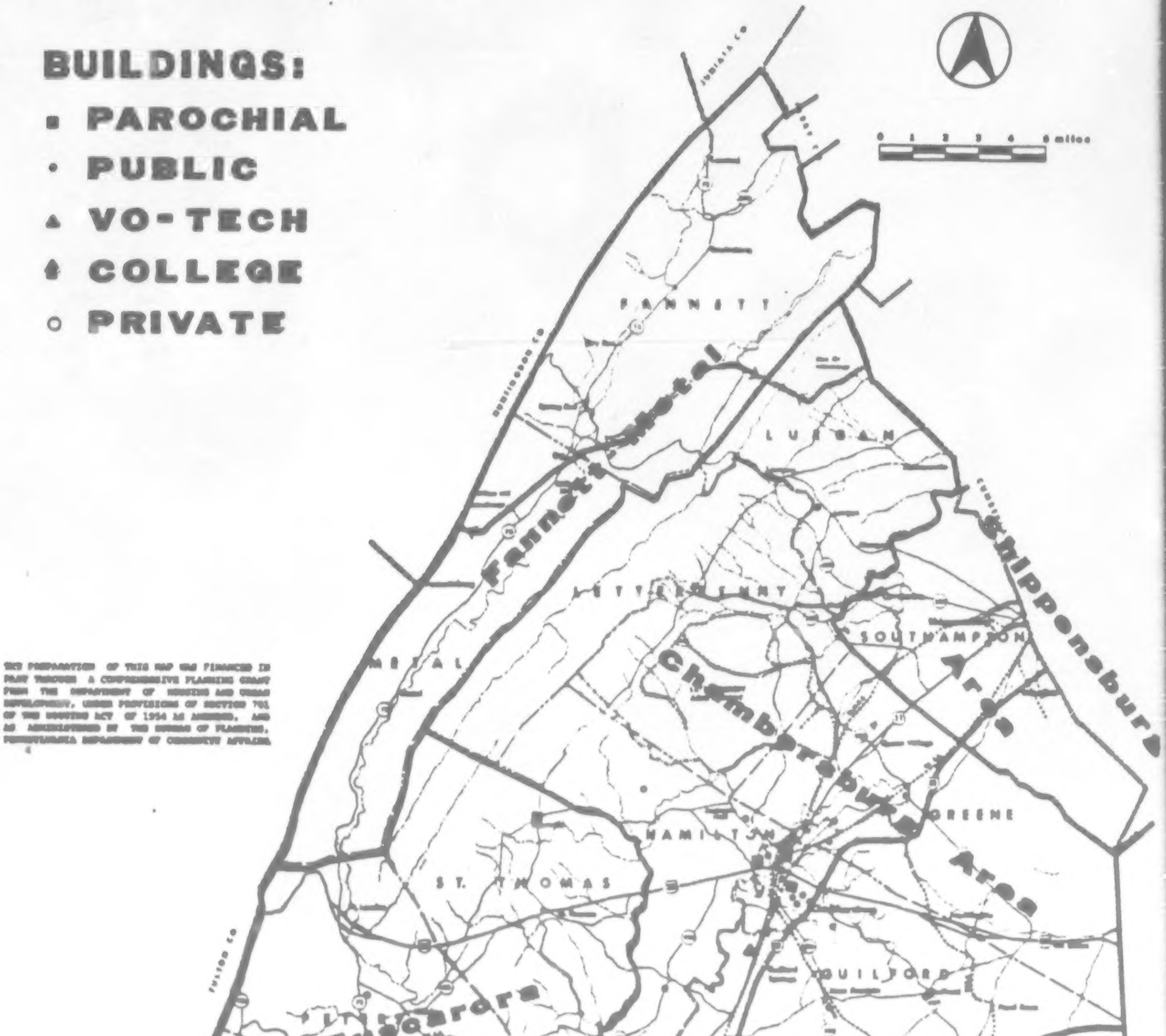
SCHOOL DISTRICTS AND FACILITIES

MAP 11

FRANKLIN COUNTY, PENNSYLVANIA

BUILDINGS:

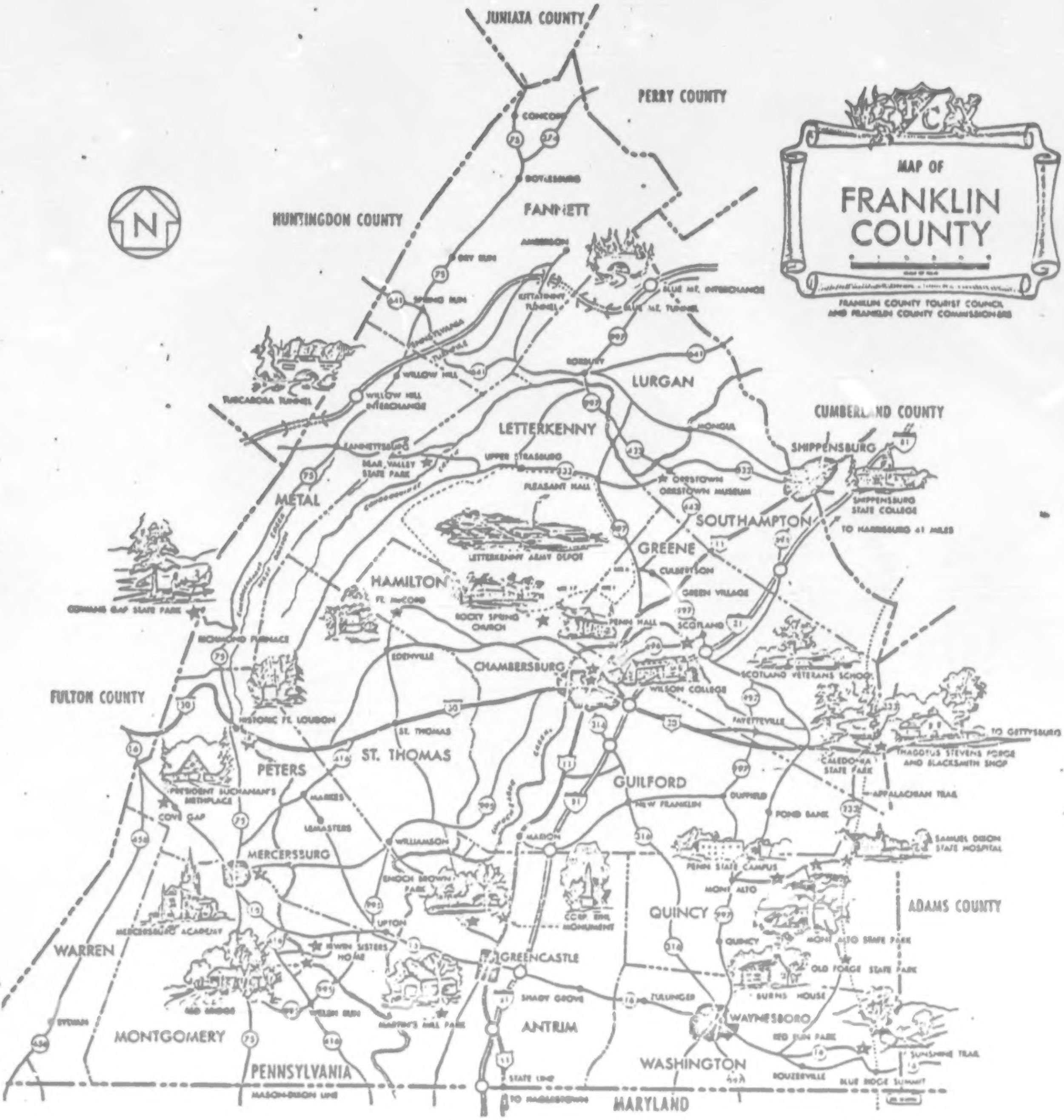
- ■ PAROCHIAL
- • PUBLIC
- ▲ VO-TECH
- ⬆ COLLEGE
- ○ PRIVATE


JUNIATA CO
PERRY CO
miles
FANNETT
Fannett-Metal
LURGAN
CUMBERLAND CO
HUNTINGDON CO
Shippensburg Area
LETTERKENNY
SOUTHAMPTON
METAL
Chambersburg Area
GREENE
HAMILTON
ST. THOMAS
FULTON CO
GUILFORD
Tuscarora
PETERS
QUINCY
Waynesboro Area
ADAMS CO
WARREN
MONTGOMERY
ANTRIM
Greencastle-Antrim
WASHINGTON

THE PREPARATION OF THIS MAP WAS FINANCED IN PART THROUGH A COMPREHENSIVE PLANNING GRANT FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, UNDER PROVISIONS OF SECTION 701 OF THE HOUSING ACT OF 1954 AS AMENDED, AND AS ADMINISTERED BY THE BUREAU OF PLANNING, PENNSYLVANIA DEPARTMENT OF COMMUNITY AFFAIRS.

FRANKLIN COUNTY PLANNING COMMISSION

MAP 12


JUNIATA COUNTY
PERRY COUNTY
MAP OF
FRANKLIN COUNTY
FRANKLIN COUNTY TOURIST COUNCIL AND FRANKLIN COUNTY COMMISSIONERS
N
HUNTINGDON COUNTY
CONCORD
BOYLESBURG
FANNETT
AMBERSON
DRY RUN
SPRING RUN
WILLOW HILL
TUSCARORA TUNNEL
WILLOW HILL INTERCHANGE
KITTATINNY TUNNEL
BLUE MT. INTERCHANGE
BLUE MT. TUNNEL
ROXBURY
LURGAN
LETTERKENNY
CUMBERLAND COUNTY
SHIPPENSBURG
SHIPPENSBURG STATE COLLEGE
TO HARRISBURG 41 MILES
FANNETTSBURG
BEAR VALLEY STATE PARK
UPPER STRASBURG
PLEASANT HALL
ORRSTOWN
ORRSTOWN MUSEUM
METAL
SOUTHAMPTON
LETTERKENNY ARMY DEPOT
GREENE
CULBERTSON
GREEN VILLAGE
HAMILTON
FT. McCORD
ROCKY SPRING CHURCH
PENN HALL
SCOTLAND
COWANS GAP STATE PARK
RICHMOND FURNACE
EDENVILLE
CHAMBERSBURG
WILSON COLLEGE
SCOTLAND VETERANS SCHOOL
FULTON COUNTY
HISTORIC FT. LOUDON
ST. THOMAS
FAYETTEVILLE
TO GETTYSBURG
THADDEUS STEVENS FORGE AND BLACKSMITH SHOP
CALEDONIA STATE PARK
PETERS
PRESIDENT BUCHANAN'S BIRTHPLACE
COVE GAP
MARKES
LEMASTERS
GUILFORD
NEW FRANKLIN
DUFFIELD
POND BANK
APPALACHIAN TRAIL
SAMUEL DIXON STATE HOSPITAL
WILLIAMSON
MARION
MERCERSBURG
ENOCH BROWN PARK
PENN STATE CAMPUS
MONT ALTO
ADAMS COUNTY
MERCERSBURG ACADEMY
UPTON
CORP. EHL MONUMENT
QUINCY
IRWIN SISTERS HOME
MONT ALTO STATE PARK
OLD FORGE STATE PARK
WARREN
GREENCASTLE
SHADY GROVE
ZULLINGER
BURNS HOUSE
WELSH RUN
MARTIN'S MILL PARK
WAYNESBORO
RED RUN PARK
SUNSHINE TRAIL
MONTGOMERY
ANTRIM
PENNSYLVANIA
WASHINGTON
ROUZERVILLE
BLUE RIDGE SUMMIT
STATE LINE
MASON-DIXON LINE
TO HAGERSTOWN
MARYLAND
75
274
641
997
433
533
641
11
81
30
16
456
416
995
316
21
15
13
997
233

The nearest regular commercial air service is provided at Harrisburg, Pennsylvania, and Hagerstown, Maryland airports, with major connections to four large municipal airports.

The Economy. Franklin County is a predominantly rural area, with over 85 percent of its land used for agriculture, forest lands, or recreation. Specifically, 45 percent of the land is either crop land or pasture, 30 percent is forest land, and the remaining ten percent consists of State parks and forests.

Tables VII and VIII provide an overview of the economic base in Chambersburg and Franklin County:

TABLE VII

Economic Development, Chambersburg Area and U.S.:
Total Population and Employees By Sector, 1950-78
(numbers in thousands)

POPULATION	1950	1960	1970	1978	Percent Change, Earliest-Most Recent Year
Chambersburg	17.2	17.7	17.3	16.5	-4.1%
Franklin Co.	75.9	88.2	100.8	107.2	41.2
U.S.	151,325.8	179,323.2	204,335.0	218,717.0	44.5
MANUFACTURING	1954	1963	1972	1977	
Chambersburg	3.3	4.7	5.2	4.9	48.5
Franklin Co.	9.1	10.3	13.0	14.6	60.4
U.S.	16,125.6	16,958.4	19,026.8	19,596.9	21.5
RETAIL*	1954	1963	1972	1977	
Chambersburg	2.1	2.0	3.0	3.6	71.4
Franklin Co.	4.3	4.5	5.8	6.6	53.5
U.S.	8,845.9	10,118.1	12,990.4	14,895.2	68.4
SERVICES*	1948	1958	1967	1977	
Chambersburg	0.3	0.4	0.7	1.0	233.3
Franklin Co.	0.6	1.2	1.4	2.1	250.0
U.S.	1,902.1	3,864.5	5,029.0	8,172.0	329.6
AGRICULTURAL*	1950	1959	1969	1974	
Chambersburg	NA	NA	NA	NA	
Franklin Co.	4.3	3.6	2.3	2.2	-48.8
U.S.	6,966.2	5,294.7	3,384.6	3,026.7	-56.6

Source: U.S. Census

* Employment in these sectors is the sum of the number of establishments and the number of employees. It is assumed that there is one proprietor per establishment. (Proprietors are excluded from the data on employees.)

NA Not Available.

TABLE VIII

Employees by Sector as Percent of Total Employees,
Franklin County and U.S.
(figures in parentheses indicate latest year
for which data is available)

	*AG (74)	MANU (77)	*RET (77)	*SERV (77)	TOTAL
Chambersburg	NA	51.6	37.9	10.5	100.0
Franklin Co.	8.6	57.3	25.9	8.2	100.0
U.S.	6.6	42.9	32.9	17.9	100.0

Source: U.S. Census

* Employment in these sectors is the sum of the number of establishments and the number of employees. It is assumed that there is one proprietor per establishment. (Proprietors are excluded from the data on employees.)

NA Not Applicable.

This data reflects the following developments:

- Chambersburg's population surged during the 1940's when Letterkenny was established. In the last 30 years, the town's population has remained at about 17,000. While Chambersburg's population has reached a plateau, the number of people in Franklin County has grown steadily since 1950.

- Manufacturing employment has increased more rapidly in Franklin County than in the United States. The number of manufacturing employees in Franklin County has increased by 60 percent, while the number in the United States has risen by just 21 percent. This trend has not, however, extended to Chambersburg, where manufacturing employment has leveled off over the last two decades.

- The number of agricultural jobs in Franklin County has been decreasing, but at a rate slightly lower than the national decline.

- The proportion of Franklin County employees in agricultural and manufacturing jobs is higher than the national average. Of Chambersburg's non-agricultural employees, the majority work in the manufacturing sector while a substantial portion work in retailing.

The School District

Of the 8,346 children educated in Chambersburg in fiscal year 1979, 1,692, or 20 percent, were connected with the Letterkenny Depot. About

93 percent of these base-connected[199] children were civilian "B" students--the children of civilians working on the base.

The composition of Chambersburg's base-connected student population was as follows:

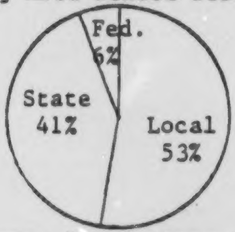
Composition of Base-Connected Children,
Chambersburg Area School District, FY 1979

Total ADA	8,346
Base-connected ADA	1,692
"A" Children	74
Military "B" Children	42
Civilian "B" Children	1,576

Source: SAFA

Most of Chambersburg's revenue comes from local sources. About 53 percent of general revenue was raised locally in fiscal year 1979, primarily from the property tax. The State of Pennsylvania contributed over $6 million in general fund revenue, or 41 percent; Impact Aid and Federal categorical funds each accounted for three percent. Public Law 874 entitlement accounted for by children of Letterkenny employees in fiscal year 1979 was $0.7 million, though the agency received only $0.4 million. The following chart shows Chambersburg's fiscal sources:

Sources of Education Revenue,
Chambersburg Area School District, FY 1979



Source: Pennsylvania Department of Education

Market value per pupil in the district, which provides the basis for general fund State aid, was below the State average. The market value of taxable property in the Chambersburg District divided by the average daily attendance was $47,816 in 1978; in the State, that figure was $49,316. The presence of Letterkenny--which occupied 44 percent of the land in the district and employed the parents of 20 percent of the children--was probably a factor in Chambersburg's low per-pupil market value.

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[199] "Base-connected" children are those who live with parents either living on, working on, or both living and working on a military base. There are two types of base-connected children: an "A" child lives with a parent who both lives and works on a military base; a "B" child lives with a parent who either lives or works (but not both) on a military base. Base-connected children do not include those federally-connected children whose parents live, work, or live and work on Federal installations other than military bases.

Of locally-raised revenue, 74 percent was raised by the property tax. The remaining 26 percent was generated by a variety of income taxes on employees and residents.

The property tax base of the Chambersburg Area School District is largely residential and commercial. Sixty-two percent of the property tax revenue came from residential sources and 22 percent from commercial property. The remaining 16 percent came from agricultural and industrial sources.

The Base

Letterkenny occupies 19,524 acres or 44 percent of the land area within the district. Letterkenny was the largest employer in the county, employing 5,360 people, or 11 percent of all employees in the county. Almost 98 percent of these employees were civilian. The base payroll was $99 million in 1979.

The number of employees at Letterkenny has remained relatively constant over the past two decades, as has the number of civilian employees. The following table shows this consistency:

Number of Employees at Letterkenny Army Depot, 1960-1979*

	1960	1970	1979
Total Employees	5,361	5,356	5,360
Military	61	79	98
Civilian	5,300	5,277	5,262

Source: Department of Defense.

* These figures do not include Non-Appropriated Fund employees or contractors.

Residential patterns of Letterkenny employees reveal that 47 percent of all the civilian employees lived in the Chambersburg District, and about 75 percent of the civilians lived in Franklin County. Of the 98 military employees, 60 lived on base and most of the rest lived in the school district. The average salary for civilian employees was over $18,000 in 1979; for military employees, it was nearly $21,000. Both of these exceeded the average salary in Franklin County, which was $11,600 in 1979.

Letterkenny has no commercial facilities on base, but some of the military employees travel 30 miles to shop at the PX and commissary in Carlisle.

Summary of Results

The following table summarizes the results of the economic impact study for the Chambersburg Area School District.*/

Expenditures

	Per-Pupil Expenditures	Base-Attributable (millions $)	Alternative Use (millions $)
Comparable districts	$1,957	$3.9-$4.3	$0.18-$0.22
State Average	$1,987	$3.9-$4.4	$0.18-$0.22

Revenues

Source		
Property taxes	$1.2-$1.3	$0.14-$0.18
State aid	$1.6-$1.8	$0.04-$0.05
Miscellaneous "other" local revenue	$0.5-$0.6	$0.02-$0.03
Total	$3.3-$3.7	$0.20-$0.24

Burden

Net Burden = (Current burden - Alternative use burden)
= (Current expenditures - Current revenues)
- (Alternative use expenditures - Alternative use revenues)

	Lower Bound (millions $)	Upper Bound (millions $)
Comparable PPE:	(3.9-3.3) - (0.18-0.20) $0.6	(4.3-3.7) - (0.22-0.24) $0.6
State avg. PPE:	(3.9-3.3) - (0.18-0.20) $0.6	(4.4-3.7) - (0.22-0.24) $0.7

Entitlement accounted for by Letterkenny Army Depot = $0.7 million.

*/ Figures rounded for clarity. Those used in text are the midpoints.

Results, Chambersburg Area School District, Chambersburg, Pennsylvania

The study determined that Chambersburg Area School District suffered a fiscal burden of between $0.6 and $0.7 million in fiscal year 1979. The Public Law 874 entitlement for Chambersburg that was triggered by children connected with Letterkenny Army Depot was $0.7 million. The midpoint of the study's estimate of the burden imposed by Letterkenny, therefore, was within seven percent of the entitlement determined by the Public Law 874 formula.

The burden occurred because the revenue generated by employees associated with Letterkenny failed to cover the costs that their schoolchildren imposed. The shortfall in revenue resulted from the failure of employees associated with Letterkenny to pay as much in local property taxes as non-base employees paid. Letterkenny-attributable[200/] families did account for more State aid than non-base-attributable families and almost as much miscellaneous "other" local revenues; these revenues, however, did not make up for the shortfall in local property tax revenues.

The following table shows the per-pupil amount of each type of revenue that base-attributable and non-base-attributable families contributed to Chambersburg Area School District:

Per-Pupil Revenue Contributed by Base-Attributable and Non-Base-Attributable Families, by Source, FY 1979

	Base-Attrib.	Non-Base-Attrib.
Property Tax Revenue/ADA	$597	$744
State Aid/ADA	$825	$745
Miscellaneous "Other" Local Revenue/ADA	$249	$257
Total	$1,671	$1,746

The table shows that while base-attributable families accounted for as much as non-base-attributable families did in per-pupil State aid and miscellaneous "other" local revenue, they did not contribute as much property tax revenue per pupil.

Two thousand ninety-three children associated with Letterkenny attended Chambersburg schools at a cost of $1,972 per pupil in 1979. About 24 percent of these pupils were the children of induced employees who were hired to accomodate the demand for goods and services of Letterkenny employees. The percentage of induced children was relatively high in Chambersburg because virtually all the employees at Letterkenny were civilians who lived off base and shopped at local stores. Another reason that Chambersburg had a large number of pupils who were the children of induced employees is that the town of Chambersburg is the residential and commercial center of the largely agricultural Franklin County. There was a relatively high probability that employees hired to accommodate base employees' demand for goods and services would live in Chambersburg itself.

[200/] "Base-attributable" refers to the sum of "base-connected" and "base-induced," and applies to employees, their schoolchildren, their incomes, and their families. It also applies to expenditures and to revenues of the local educational agency that have been accounted for by base-attributable families. "Base-induced" refers to those employees (as well as to their schoolchildren and income) in the commercial sector who were hired to accommodate the spending of base employees.

While children associated with Letterkenny imposed costs of about $4.2 million on Chambersburg, the employees associated with Letterkenny contributed only $1.25 million in local property taxes--enough revenue to cover only 30 percent of the education costs of their schoolchildren. In local educational agencies throughout Pennsylvania, in contrast, property tax revenues financed about 40 percent of the cost of education. Of the $4.2 billion in education revenue raised by agencies throughout Pennsylvania, $1.7 billion came from local property taxes in 1979.

Within the Chambersburg Area School District, base-attributable families failed to contribute as much property tax revenue per pupil as did families who were not associated with Letterkenny. Base-attributable families, who accounted for 2,093 children in 1979, paid $597 per pupil in property taxes; non-base-attributable families, with 6,253 children, contributed $744 per pupil, or $147 more than those associated with Letterkenny.

State aid provided a higher percentage of education revenue in Chambersburg than it did, on the average, in the rest of Pennsylvania. In addition, within Chambersburg itself, State aid per child was higher to base-attributable children than it was to non-base-attributable children. Chambersburg received $766 per child from the State, an amount that comprised 41 percent of its revenue; agencies throughout Pennsylvania received an average of 39.4 percent of their revenues from the State. State aid to Chambersburg, therefore, provided a portion of revenue that was 1.6 percentage points higher than the portion provided to agencies in the rest of Pennsylvania. Within Chambersburg itself, State aid contributed $825 per base-attributable child, or 49.4 percent of the general fund revenue for base-attributable children. The base-attributable children in Chambersburg, therefore, accounted for $59 more in State aid than did the average child in Chambersburg.

Base-attributable families accounted for a higher portion of State revenue than did other families in the district because they were associated with property having less taxable market value per pupil. The State formula increases aid as the taxable market value per pupil in a district decreases. The per-pupil market value associated with base-attributable employees' place of residence, employment, and shopping was $40,371 in 1979, compared with the per-pupil market value of non-base-attributable employees of $50,301. The tax-exemption of the place of work of Letterkenny employees reduced the taxable market value associated with these employees and triggered additional State aid.

Chambersburg also imposed income and employee taxes, which are a function of income and the number of employees, respectively. Letterkenny-attributable employees paid $0.522 million in these taxes, or $249 per pupil. This per-pupil payment was comparable with the payment made by non-base-attributable employees in the district, which was $257--a difference of just eight dollars.

Thus, the revenue shortfall that stems from the presence of the base can be attributed to the shortfall in property tax revenue from employees associated with Letterkenny. Their property tax contributions covered a substantially smaller share of their education costs than did the same contributions of families throughout Pennsylvania. Furthermore, the property tax revenue per pupil accounted for by base-attributable families was $147 less than was revenue per pupil from non-base-attributable families.

The shortfall in property tax contributions from Letterkenny employees occurred despite the fact that a high proportion of the overwhelmingly civilian workforce lived and shopped in Chambersburg. Furthermore, Chambersburg is the commercial center of Franklin County, attracting shoppers who live throughout the county: 56 percent of the retail sales in the county took place in Chambersburg in 1979. A substantial portion of the shopping done by all Letterkenny employees, therefore, was done in Chambersburg, contributing to its commercial property tax revenues. Finally, the amount of income that Letterkenny employees received exceeded the average income of other employees in the county. Base employee contributions to residential commercial property tax revenues, on average, were correspondingly higher than those of Pennsylvania. The average income of civilian base employees was $18,000 and of military employees $21,000 in 1979, both substantially above the county average of $11,500.

Chambersburg suffered a burden from the base despite the presence in the district of a substantial number of relatively affluent base employees who lived and did most of their shopping in the district. The property tax shortfall from these employees could only have resulted from the exemption from property tax enjoyed by their place of employment, Letterkenny Army Depot.

The correspondence between the Commission's finding of a $0.6 million burden and the Public Law 874 entitlement of $0.7 million for Chambersburg's Letterkenny-connected children stems chiefly from two factors:

- Discrepancies between the data used by the Commission and the Public Law 874 formula cancelled each other out. These discrepancies occurred in the determination of local contribution per pupil ("local contribution rate", or LCR) and in the weighted number of children associated with the Federal burden. The Public Law 874 formula determines entitlement by multiplying the LCR by the weighted number of federally-connected children. The Commission's data on local contribution per pupil was higher than the LCR from the formula, but the Commission's estimate of the weights for the weighted number of base-attributable children would have been lower than the weights assigned under Public Law 874.

- The Public Law 874 formula captured most of the patterns of Federal impact that the Commission found applied to Chambersburg. The Commission found that insertion of much of its data into the Public Law 874 formula resulted in an estimate of entitlement within $0.4 million of the Commission's final determination of burden. The variables in the formula explained a substantial part of the burden found by the Commission.

Chambersburg's LCR in 1979 was $888--reached by use of the one-half State average per-pupil expenditure method provided in Public Law 874 for calculating LCR. The Commission found that substitution of its own data into the Public Law 874 formula resulted in a local contribution per pupil of $1,144.

The following table shows how the local contribution per pupil for Chambersburg was determined under current law and what that rate would have been if the study's data were used:

Local Contribution Per Pupil and LCR, Determined Using
Commission Data and P.L. 874 Data, Respectively

	Per-Pupil Expenditure	Local Share	Local Contribution Per Pupil/LCR (PPE x Local Share)
Commission*	$1,972	0.58+	$1,144
P.L. 874	$1,775†	0.50	$ 888

* The Commission figures represent the midpoint in the range of data determined and used by the study.

+ Study's determination of non-State share of costs of base-attributable children.

† Average per-pupil expenditure, State of Pennsylvania, FY 1977.

The Commission's determination of local contribution per pupil was [illegible] percent higher than LCR under Public Law 874. This is because both Commission figures used to compute local contribution--the per-pupil expenditure and the local share of expenditures for base-attributable children--were higher than the corresponding figures applied by the Public Law 874 formula.

The per-pupil expenditure figure used by the Commission was higher than that used under Public Law 874 because the Commission's data was more current. The Commission estimated Federal impact for 1979 from fiscal year 1979 data on per-pupil expenditures for the State and for districts determined to be comparable with Chambersburg by the Pennsylvania Department of Education.[201] The Public Law 874 formula, in contrast, applied

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201/ The Pennsylvania Department of Education applied Department of Education criteria to select the comparable districts at the request of the Commission.

per-pupil expenditure figures from fiscal year 1977 to estimate Chambersburg's entitlement for fiscal year 1979. This two-year-old data did not reflect the cost increases that occurred between 1977 and 1979.

The Commission's estimate of the local share of base-attributable expenditures--which amounted to 58 percent of total expenditures--was also higher than the local share provided by the Public Law 874 formula. The Commission estimated the local share by first determining the current expenditures imposed by base-attributable children and State revenue triggered by base-attributable families. The Commission then divided the difference between the two figures by base-attributable current expenditures to arrive at local share. [Local Share = (Expenditures, Base-Attributable - State Revenues, Base-Attributable) ÷ Expenditures, Base-Attributable.] The Impact Aid law allows districts to assume local shares of 50 percent of State or national average per-pupil expenditures; Chambersburg used one-half the State average.

Thus the Commission figure for local contribution per base-attributable child was higher than the LCR used in computing Chambersburg's Public Law 874 entitlement. Despite the difference, however, the Commission's estimate of burden turned out to be commensurate with Chambersburg's Public Law 874 entitlement. The reason is that the Commission took into account revenue contributions that the Public Law 874 formula did not.

The Public Law 874 formula determines entitlement by multiplying the local contribution rate by the weighted number of federally-connected children. The weights assigned to each child differ on the basis of the statute's estimate of the relative property tax burden imposed by each child's family.[202/] The different weights reflect the property tax contributions from places of residence and employment by the families of different types of children.

The Commission considers these property tax contributions from base-attributable families but also takes into account their contributions to commercial property tax revenues and miscellaneous "other" local

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[202/] Children of military parents living on base are assigned a weight of 1.0 because their parents contribute no property taxes to the local educational agency. Children of military parents living off base, on the other hand, are assigned a weight of 0.5 on the ground that their parents pay property taxes on their residence, which are assumed to account for 50 percent of all property tax revenues. Other weights are assigned to pupils who are the children of civilian employees, and their weights differ according to whether their parents live in or out of the county. Finally, still other weights are assigned to those children participating in special education programs. The Commission assigned induced children a weight of 0.45, the same weight that is given by Public Law 874 to children of civilian employees working in the county.

revenues. If the Commission model were to incorporate these revenue contributions into the Public Law 874 formula, the effect would be to lower the weights applied by Public Law 874 to measure entitlement. The lower weights that the Commission model would apply would reduce the burden and offset to some extent the Commission's comparatively high estimate of per-pupil local contribution.

To determine just how large a role the relative revenue burdens--as measured by the weights--played in explaining the Commission's burden, the Commission estimated entitlement by inserting some of its own data into the Public Law 874 formula. The two inserted variables--somewhat different from those actually applied to Chambersburg by the formula--were the Commission's determination of the local contribution per base-attributable child and the number of base-attributable children, using the weights assigned to these children by Public Law 874. In determining the number of children, the Commission included base-induced[203] children in the district, as well as children directly connected to the base. The Commission incorporated induced employees and their schoolchildren into all calculations of base effects on expenditures and revenues.

A comparison of the determinations of entitlement using Commission data and data provided under Public Law 874 yielded the following results:

Entitlement, Determined with P.L. 874 Data and
Commission Data (Using P.L. 874 Weights)

Public Law 874		Commission	
Local Contribution Rate	$888	Local Contribution Per Base-Attributable Child	$1,144
Weighted Number of x Base-Connected Children	802	Weighted Number of x Base-Attributable Children	983
= Entitlement	$0.7 million	= Entitlement	$1.1 million

This $1.1 million figure--reached by inserting Commission data into the Public Law 874 formula--is $0.5 million below the Commission's final result of a $0.6 million burden. This closeness suggests that the Public Law 874 formula captures many of the same dynamics of Federal impact that the Commission estimated were taking place in Chambersburg.

The $0.5 million difference stems from the Commission's consideration of commercial property tax revenue and miscellaneous "other" local revenues--contributions that would have the effect of lowering the weights applied by the formula to reflect Federal burden. These contributions are not taken into account by the weights in the formula but are considered by the Commission. The contributions of base-attributable employees in Chambersburg are likely to be particularly large both because Chambersburg is the commercial center of Franklin County and because miscellaneous "other" local revenue is substantial in Chambersburg.

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[203] See note 200, supra, regarding the term "base-induced."

The extent of the concentration of commercial activity in Chambersburg can be seen from a comparison of the retail sales in Chambersburg with the sales in Franklin County. Retail sales and taxable services in Chambersburg totaled $234.9 million in 1979--an amount comprising 56 percent of all sales and services in Franklin County. The population of Chambersburg, however, was only 16,500--just 15 percent of the Franklin County population. The predominantly civilian employees of Letterkenny Army Depot were likely to do 56 percent of their shopping in Chambersburg, according to the model, if they lived in Franklin County. These purchases resulted in commercial property tax revenues for the local educational agency that were measured by the model but were not taken into account by the weights in the entitlement formula.

Miscellaneous "other" local revenues in Chambersburg consisted chiefly of various income taxes imposed by the agency on local employees and residents. Chambersburg was the only district studied where these kinds of taxes were levied, and consequently these miscellaneous "other" local revenues constituted 26 percent of locally-raised revenue--the highest proportion in any district that the Commission studied. Because Letterkenny employees were predominantly civilian, they contributed to these revenues just as any employees and residents in the district did. Again, the model took these revenues into account in measuring the burden of the base, though the weights in the formula did not.

Finally, the residential property tax contributions of base-attributable families were probably higher in the Commission model than the contributions indicated by the weights. The Public Law 874 formula assumes that base employees living off base contribute as much residential property tax revenue as other employees in the area; it is also assumed that residential property tax payments constitute 50 percent of all property taxes accounted for by non-Federal employees. The Commission model estimated the residential property tax contributions of base employees on the basis of their incomes: the higher the incomes of employees, the more the model assumed they paid in residential property taxes. Base employees in Chambersburg earn more, on average, than did non-base employees in the area: their average income of $18,000 was substantially more than the $11,600 averaged by other employees in the county in 1979. The Commission model, unlike the Public Law 874 formula, therefore estimated the residential property tax contributions of base employees to be higher than the contributions of non-base employees.

The Commission's determination of burden was commensurate with Chambersburg's actual entitlement because discrepancies between data used by the Commission study and data applied by the formula cancelled each other. The Commission's estimate of local contribution per base-attributable child was higher than the corresponding figure applied in the Public Law 874 formula, but its weighted number of base-connected children would have been lower. The other reason that burden and entitlement were similar was that the formula captured a substantial part of the impact of Letterkenny Army Depot on Chambersburg Area School District. The most important components of Federal impact in the Commission study proved to be the variables in the formula.

Results from Alternative Use

The study reckoned that if Letterkenny Army Depot had not located in Chambersburg and alternative use had been made of the site, Chambersburg School District would have received enough revenue from employees associated with the site to have paid for the children from that site. District expenditures for those children would have been $0.2 million, and revenues from the site and from induced employees would have been $0.22 million.

The amount of expenditures and revenues generated under alternative use would have been relatively small--the $0.2 million in expenditures and revenues would have been only five percent of the expenditures imposed by children associated with Letterkenny Army Depot now. The land occupied by the base would have been primarily agricultural: over 90 percent of the site would have been put to agricultural uses, with the remainder divided between residential and commercial uses. (See Attachment II, infra.) Alternative use would have generated only five percent as many students as Letterkenny does. The less intensive use of the site would have imposed only about 100 schoolchildren on the district: this contrasts with the 1,692 children attributable to Letterkenny today.

The return to the tax rolls of Letterkenny's 19,524 acres, which comprise 44 percent of the land area in the district, would increase the district's taxable market value. The per-pupil market value of the district would increase from the current $47,817 to $51,056. The average per-pupil market value in Pennsylvania was $49,316 in 1978.

The effect of returning Letterkenny to the tax rolls would have been to increase local property tax revenues from the site and decrease the proportion of costs paid by State aid. Most of the revenue associated with the site would have derived from local property tax revenue and State aid. Of the $0.22 million in revenue, $0.16 million would have originated from property tax revenue paid by the owners of the agricultural property and the scattered non-agricultural residences, as well as from commercial establishments patronized by families working or living, or both working and living, on the site.

State aid triggered by the children and market value of the site would have contributed between $0.04 million.

State aid as a proportion of education costs associated with the site would have decreased from 41 percent with Letterkenny present to about 22 percent under alternative use. The Pennsylvania State formula decreases aid as market value per-pupil increases.

The remainder of the revenue generated by the site--$0.02 million--would have come from miscellaneous "other" local revenue.

ATTACHMENT I

STATISTICAL PROFILE, CHAMBERSBURG AREA SCHOOL DISTRICT, FY 1979

Summary

I. School District

Average Daily Attendance (ADA)	
Total	8,346
Base	1,692
Military A	74
Military B	42
Civilian B	1,576
Base Employees	
Total	6,119
Military, total	98
Living in district, on base	60
Living in district, off base	28
Civilian, total	6,021
Living in district	3,308
Acres	
Acres, district	44,032
Acres, base	19,524

II. Local Educational Agency

Per-pupil expenditure, average of comparable districts	$ 1,957
Per-pupil expenditure, State average	$ 1,987
Total Property Tax Revenue	$5,899,000
Residential sources	$3,663,000
Commercial sources	$1,303,000
Industrial & Agricultural sources	$ 933,000
Total General Fund State Aid	$6,393,000
Miscellaneous "Other" Local Revenue	$2,126,000
P.L. 874 Entitlement, Letterkenny Army Depot	$ 710,000
P.L. 874 Appropriation, Letterkenny Army Depot	$ 370,000

Current Use

I. Current Expenditures

Average personal income	$14,301
ADA/Job	0.40
Per-pupil expenditure, comparable districts	$1,957
Per-pupil expenditure, State average	$1,987
ADA, base	1,692

II. Current Revenues

TYPE OF EMPLOYEE	NUMBER		AVERAGE WAGES AND SALARIES
	living in district	SMSA (excl. district)	
Civil service	2,612	1,245	$18,352
Non-Appropriated Fund employees (NAF)	62	30	$ 8,944
Contractors	634	0	$11,645
Working spouses	722	278	$11,645
Military off base	28	10	$20,879
Working spouses	9	3	$11,645
Military on base	60	0	$20,879
Working spouses	19	0	$11,645

Personal Income Adjustment, base employees (except NAF)	1.21
Personal Income Adjustment, NAF employees	1.12

Net Multipliers

Civil service employees	.24 - .40
Spouses, civil service employees	.00 - .40
NAF employees	.23 - .37
Military employees	.17 - .33
Spouses, military employees	.00 - .35

a. Residential Property Tax Revenue ($3,663,000)

Enrollment, district	9,346
Enrollment, county	22,200
Population, county, 1978	107,200
Per capita personal income	$7,851
ADA, low-rent public housing	288

b. Commercial Property Tax Revenue ($1,303,000)

Percentage of personal income spent on retail goods and taxable services	59.3%
Percentage of military consumption at Carlisle	30.0%
Total, retail sales & taxable services, district, 1979	$234,900,000
Total, retail sales & taxable services, county, 1979	$418,474,000

c. General Fund State Aid ($6,393,000)

Non-categorical aid	$5,055,000
Categorical aid	$1,338,000

d. Miscellaneous "Other" Local Revenues (Non-Property Tax Revenues) ($2,126,000)

Total ADA, district	8,346
"Other" local revenue, function of ADA	
Total per capita tax	$ 116,000
Miscellaneous	$ 285,000
"Other" local revenues, function of taxable income	
Total earned income tax	$1,203,000
Total real estate transfer tax	$ 235,000
Employee tax per employee	$ 10
Other revenues not attributable to base employees	$ 22,000

Alternative Use

III. Alternative Use Expenditures

Average personal income	$14,301
ADA/Job	0.40
Per-pupil expenditure, comparable districts	$ 1,957
Per-pupil expenditure, State average	$ 1,987

IV. Alternative Use Revenues

	No. Acres	% Land Developed	Avg. Tax Per Acre	Emp. Per Acre	Avg. W&S
Agricultural	19,524-17,572	.8445	$6.65	—	—
Proprietors	—	—	—	.0084	$13,783
Employees	—	—	—	.0052	$ 6,443

Number of working spouses of alternative use site employees, district	39-35
Number of working spouses of alternative use site employees, county, excluding district	4-4
Average W&S, working spouses of alternative use site employees	$11,645
Personal Income Adjustment	1.21
Net Multipliers	
Alternative use employees	.24 - .40
Alternative use working spouses	.00 - .40

a. Residential Property Tax Revenue ($3,663,000)

Percentage induced income accruing to district residents	37.4%
Enrollment, district	9,346
Enrollment, county	22,200
Population, county, 1978	107,200
Per capita personal income	$7,851
ADA, low-rent public housing	288

b. Commercial Property Tax Revenue ($1,303,000)

Percentage of personal income spent on retail goods and taxable services	59.3%
Percentage of military consumption at Carlisle	30.0%
Total, retail sales & taxable services, district, 1979	$234,900,000
Total, retail sales & taxable services, county, 1979	$418,474,000

c. General Fund State Aid ($6,393,000)

Non-categorical aid	$5,055,000
Categorical aid	$1,338,000

d. Miscellaneous "Other" Local Revenues (Non-Property Tax Revenues) ($2,126,000)

Total ADA, district	8,346
"Other" local revenue, function of ADA	
Total per capita tax	$ 116,000
Miscellaneous	$ 285,000
"Other" local revenues, function of taxable income	
Total earned income tax	$1,203,000
Total real estate transfer tax	$ 235,000
Employee tax per employee	$ 10
Other revenues not attributable to base employees	$ 22,000

ATTACHMENT II

BASIS FOR PROJECTIONS OF ALTERNATIVE SITE USE

Estimates of how the site occupied by Letterkenny Army Depot would have been used if the base had never been established were made by the following experts on land use in the area:

Bill Britten, Historian of Franklin County
Tom Donahue, Franklin County Tax Assessor
Eugene Gayman, Vice-President, Pennsylvania Farmers' Association
John Shearer, Franklin County Extension Service
Phil Tarquino, Franklin County Planning Commission

They reached a consensus that 90-100 percent of the site now occupied by Letterkenny would have been used for agricultural purposes. They also agreed that any remainder would have been put to low-density residential use.

Their conclusions rested on two arguments: that the site itself was conducive to agriculture more than to any other economic activity, and that the surrounding area--like the Letterkenny site--was agricultural as a result of the natural and economic resources of the area.

The U.S. Army acquired the 19,524-acre site now occupied by Letterkenny Army Depot in 1942. The land was purchased from 381 individuals and included the farms of some 250 families, eight public schools, five churches, and eight cemeteries, according to the Chambersburg Chamber of Commerce.

The site is composed primarily of Berks and Weikert soils, which are well-drained silt loams that contain a high percentage of shales. This type of soil provides a fair-to-good agricultural base. The southeastern portion of the site consists of Hagerstown soil, a deep, well-drained soil formed from limestone. This type of soil retains water well and is considered a prime base for crop land, according to the Franklin County Planning Commission.

The Planning Commission, which rates areas in Franklin County according to their potential for development, has given the area in which the site is located a ranking of three out of a possible five. Calling the site a "tertiary developable" area, the Planning Commission described it as an area that, if it were to be developed, should be done "very carefully." Any kind of residential development, the Commission pointed out in its most recent Comprehensive Plan, would face "severe" sewage problems as a result of the particular type of soil association.

The local experts projecting the alternative use of the site agreed that the site was conducive neither to residential nor industrial development. Transportation facilities in the county are poor, they noted, and the supply of public water was limited.

Transportation facilities, and especially those required for bulk items, are limited because no river passes through Franklin County and because no major railroad yards operate in the county. The nearest major river is the Susquehanna River, which flows through Harrisburg, about 45 miles from Chambersburg. Both ConRail and Western Maryland railroad carriers pass through Chambersburg, but the terminals for both carriers are at Harrisburg and Hagerstown, Maryland, which is about 25 miles from Chambersburg. This rail service is devoted exclusively to general freight and raw material handling. Furthermore, the nearest air freight service is provided at airports in Harrisburg and Hagerstown. Long-distance transport of bulk goods in Franklin County is provided primarily by truck along interstate highways 81 and 76.

The supply of public water available to the Letterkenny site is also relatively limited. The amount to which the site would have access is dwarfed by the supply available to the five boroughs of Franklin County, none of which has a population of more than 16,500. This small water supply contributed to the classification of the Letterkenny site as a "tertiary developable" area by the Franklin County Planning Commission.

The local experts pointed to the small amount of industrial activity in Franklin County as evidence that the transportation facilities and water supply would have precluded industrial use of the Letterkenny site. Of the 754.0 square miles in Franklin County, only 2.6 square miles--or 0.34 percent of the land area--was used for manufacturing in 1974.

Consequently, the population in the county is also small. Chambersburg, with a population of 16,500 in 1978, is the largest borough. The next largest is Waynesboro with a population of 10,000 in 1970, and the three other boroughs--Greencastle, Mercerburg, and Shippensburg--have a combined population of less than 6,500.

III. HOW SHOULD THE TERM "FEDERAL PROPERTY" BE DEFINED?

The general principle underlying the major part of Impact Aid is that the existence of real property which is not subject to State and local taxation in the school district of a local educational agency entitles that local educational agency to payments to offset property tax revenues lost.[204] Thus, it is the tax-exempt status of land which governs its inclusion in the definition of Federal property. If Impact Aid policy is to be both consistent and complete, the definition of Federal property should include all tax-exempt land and include none which is not entirely tax-exempt.

The statute has since 1950 defined "Federal property" generally as that property which is owned or leased by the United States and is not subject to State or local taxation. From the beginning of the program, the definition has included exceptions or clarifications such as "Indian lands," defined as real property which is either held in trust by the United States for individual Indians or Indian tribes or held by individual Indians or Indian tribes and is subject to restrictions upon alienation imposed by the Federal Government.

Excluded from the definition of Federal property in the 1950 statute were --

(1) any real property used by the United States primarily for the provision of services to the local area in which that property is located;

(2) any real property used for labor supply centers, labor homes, and labor camps for migratory farm workers; and

(3) any low-rent housing part of a low-rent housing project assisted under the United States Housing Act of 1937.

Post offices were effectively excluded from the definition of Federal property in 1950 because the legislative history made clear that they are considered property used primarily for the provision of services to a local area.

Other kinds of property have been added to the definition of Federal property, including private leasehold interests in Federal property, property owned by foreign governments, and any school providing flight training to members of the Air Force.

The following is a description of the kinds of property which have been included in, and excluded from, the definition of Federal property since Public Law 874 was enacted, together with the reasons for inclusion and exclusion where legislative history provides insight.

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[204] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 2, 7, 27 (1950).

(1) Real property which is owned or leased by the United States, and which is not subject to taxation by any State or any political subdivision of a State or by the District of Columbia.

This general definition was included in the original Impact Aid law and remains unchanged today. This is the category in which most property falls against which school districts claim for Impact Aid. It is the kind of property about which the original House Report on Public Law 874 stated:

> ...the United States has become an industrialist, a landlord, or a businessman in many communities of the Nation without accepting the responsibility of the normal citizen in a community, because property under Federal ownership or control generally is not subject to local taxation.

Because of this, the Report continued:

> Federal activities place a financial burden on adjacent school districts for the following principal reasons:
> 1. Federal ownership of property reduces local tax income for school purposes.
> 2. A Federal project or activity causes an influx of persons into a community, resulting in an increased number of children to be educated.

Thus, the rationale for including real property owned or leased by the Federal Government and not subject to taxation by localities is the property's very tax exemption, which exists because of Federal ownership.

(2) Real property leased from the Secretary of the Army, Navy, or Air Force under section 805 of the National Housing Act, as amended (so-called "Wherry-Spence housing").

This property was included in the original definition of Federal property in Public Law 874. The rationale for inclusion, according to the House Report on the bill, was that:

> [Wherry-Spence housing] was intended to play an important role in providing housing to military and civilian personnel connected with Federal activities in areas suffering acute housing shortages.

That same report observed that "the State and local tax status of [Wherry-Spence housing] is not clear at this time" and that if Wherry-Spence housing became "fully subject to State or local taxation," inclusion in the definition of Federal property for Impact Aid purposes would no longer be necessary.

The language specifically referring to Wherry-Spence housing was stricken from the definition of Federal property in 1953 by Public Law 83-248. It is considered, however, that Wherry-Spence housing is included in the general category of leased property owned by the United States whether taxable or tax-exempt.[205]

(3) Real property held in trust by the United States for individual Indians or Indian tribes and real property held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States.

Indian lands have been included in the definition of Federal property since 1950. There is no explanation for this inclusion in the legislative history, though it seems clear that Indian lands are included because of their tax-exempt status.

(4) Any low-rent housing (whether or not owned by the United States) which is part of a low-rent housing project assisted under the United States Housing Act of 1937.

When Public Law 874 was originally enacted, low-rent housing property was specifically excluded from the definition of Federal property. The House Report defended the exclusion on the grounds that a Federal subsidy is "a form of Federal aid to the local communities." The Report provided further:

> It was intended that the communities bear a substantial portion of the cost involved [in providing low-rent housing]. It was understood from the beginning, that full taxes could not be paid if the necessary low rentals were to be achieved and that the loss represented by the difference between full taxes and payments in lieu of taxes would represent the local contribution toward a joint Federal and local program intended primarily for the benefit of the locality.

In 1970, Public Law 91-230 amended the Impact Aid law to include low-rent housing in the definition of Federal property. The Senate report on that bill reasoned that children residing on low-rent housing have "as heavy an impact on local educational agencies as that of children considered to be federally connected under present law." That report also pointed out that inadequate payments in lieu of taxes "bear no relationship to the cost of providing education for the children residing in [low-rent housing]."

Thus low-rent housing projects are currently included in the definition of Federal property under Impact Aid not because of their inherent tax-exempt status resulting from Federal ownership, but because of Federal law which renders them tax exempt.

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[205] *See* section 5, *infra*.

(5) Any interest in Federal property...under an easement, lease, license, permit, or other arrangement, as well as any improvements of any nature...on such property even though such interests or improvements are subject to taxation by a State or political subdivision of a State or by the District of Columbia.

This provision means that interests owned by private individuals or firms in land held in fee by the Federal Government are included in the definition of Federal property. The House Report on the 1953 amendment adding this provision to the statute pointed out that "property taxes realized on [some] leased property or improvements are for the most part negligible and in no way represent a normal tax return on the property involved." For this reason, Impact Aid was amended to allow local educational agencies "to count children whose parents live or work on [leased property]." Property taxes "paid in connection with such leased property and becoming available to the school district," the amendment provided, must be "deducted from any [Impact Aid] payments...."

Thus federally-owned property leased to private individuals or firms are included in the definition of Federal property because of the tax exemption flowing from Federal ownership.

(6) Property owned by a foreign government or by an international organization which by reason of such ownership is not subject to taxation by the State in which it is located or a subdivision thereof.

On the basis that foreign-owned property is tax-exempt, that property was included in the definition of Federal property in 1978. The Senate Report on Public Law 95-561 provided:

> ...property owned by foreign governments and international organizations should be treated in the same manner as federally owned property. Thus, where the property owned by foreign governments and international organizations is not subject to taxation by the State in which it is located, or a subdivision of that State, and where that property generates no local tax revenues, payments will then be made to the local educational agency....

It is government, though not Federal, ownership giving rise to tax exemption which warrants inclusion of foreign-owned property in the definition of Federal property.

(7) Federally-owned property used by the United States primarily to provide benefits to the local community.

The original Impact Aid law provided that property, though federally-owned and tax-exempt, which is used primarily to provide benefits to a local community, is not part of the definition of Federal property giving rise to Impact Aid payments. Post offices and district courthouses were two kinds of property mentioned in the original House Report which provide benefits to a community. Excluding property which benefits a locality squares with the underlying rationale of Impact Aid compensating for a Federal burden. In 1966, however, the Congress concluded that it was "extremely difficult to determine when Federal property is, and when it is not," primarily a benefit to a community. Further, as the House Report on Public Law 89-750 observed:

> ...federally owned property on which children live or their parents are employed creates a measurable financial burden for the school district, whether or not the property is used primarily for a local service or benefit.

For this reason, the exclusion of federally-owned property which primarily benefits a community was eliminated from the definition in 1966. In this case it is Federal ownership giving rise to tax exemption which justifies the inclusion in the definition of Federal property under Impact Aid.

(8) Any real property under the jurisdiction of the Post Office Department and used primarily for the provision of postal service.

When Public Law 89-750 amended the definition of Federal property in 1966 to include property which primarily benefits a community, the House Report made clear that "[t]his amendment does not include post office buildings." This provision preserved the effect of a 1958 amendment to Public Law 874 made by Public Law 85-620, which specifically exempted post offices, as property providing a service and benefiting localities, from the definition of Federal property under Impact Aid. Thus, though post offices have been excluded from the definition of Federal property in the legislative history of Impact Aid since 1950, it was not until 1958 that the statute itself was amended to read:

> Federal property...does not include...any real property under the jurisdiction of the Post Office Department and used primarily for the provision of postal services.

The specific exclusion in the statute of post office property was introduced as part of the Administration's 1958 Amendments. The House and Senate Reports give no rationale for the exclusion.

However, the Congressional Record, which contains the Administration's proposed amendments to Public Law 874, states that "the definition of 'Federal Property' has been changed to exclude post office property used primarily for the provision of benefits (as well as services) to local areas, since such property primarily serves local rather than national interests...."

(9) Any school which is providing flight training to members of the Air Force at an airport owned by a State or political subdivision.

Public Law 84-949 added this property to the definition of Federal property in 1956. The Senate Report on that bill pointed out that "if the schools were run by the Department of the Air Force on federally owned or leased property," children of parents working on the property could be counted for Impact Aid purposes. The schools "are located on municipal airports which were once federally owned but...were transferred...to the municipalities when their need for military purposes after World War II was completed." Flight training is provided to cadets by a private company under contract with the Air Force. "[T]his type of contractual arrangement...is of decided advantage to the United States financially," the Senate Report noted, concluding that "school districts serving these installations should be permitted to count these children as if the school were federally owned or leased."

(10) Any real property used for a labor supply center, labor home, or labor camp for migratory farm workers.

This property was specifically excluded from the original definition of Federal property in 1950 because, in the words of the House Report on Public Law 874, "[t]he Committee felt that such camps were of benefit to the immediate area in which they were located and that such benefit outweighed any burden which might be created in their presence."

That specific exclusion was stricken from the Impact Aid statute in 1970, when Congress brought "housing property for migrant workers" into the definition of Federal property along with other low-rent housing. The Senate Committee Report on Public Law 91-230, the law which expanded the definition to include low-rent and migrant housing, observed that "a single low-rent housing project may force a local school district to construct several new schools simply to house children residing in the housing project."

When determining whether a class of property should be included within the definition, the issue is: does the property in question constitute a revenue burden? Is real property being removed from the tax rolls and are children residing on that property, or children whose parents are employed on that property in attendance at the schools of a local educational agency? If so, is the tax exemption the result of Federal law? When these tests are applied to the definition in current law, with a few exceptions, that definition meets those tests.

It is the exceptions which cause problems. They tend to be vestiges of policies intended to limit the size of the program, of single purpose amendments to accommodate particular pieces of property, of judgments as to whether a class of property constitutes a benefit to the community, and of policies to ease administrative functions. These exceptions are not only inconsistent with the purpose of the definition--to lay the basis for determining whether a revenue burden or service burden exists --but cause the definition to be complex and confusing.

The Commission has had a policy in favor of simplification of the law and, to the extent practicable, simplification of concepts. In order to accomplish this it has been necessary to treat unusual or exceptional situations individually and determine whether consistency with overall policies is possible; and if it is not, whether the desired result merits an exception.

The policy stated in the test of whether the property in question constitutes the basis of a Federal burden on a State or its subdivisions excludes three classes of property now included in the definition:

(1) interests in Federal property under easements, leases, licenses, permits, and other arrangements (as well as improvements on that property) which are subject to taxation by the States and their subdivisions;

(2) flight training schools on property owned by the States or their subdivisions; and

(3) property owned or leased by the United States located in the District of Columbia or located in other jurisdictions governed by the laws of the United States but which are not States.

Taxable Interests in Federal Property. Taxable interests in Federal property cause complexities not easily handled with the simplified definitions. The trend in the courts in favor of permitting State taxation of private property located on Federal property and of private leasehold interests in Federal property recognizes the need of local governments for revenues and, to the extent that private interests are taxed, there is a reduction in the magnitude of Federal burden.[206]

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[206] See James v. Dravo Contracting Co., supra note 72; The Michigan Cases, supra note 98; United States v. County of Fresno, supra note 99.

If a local government may tax the private interest of a public employee in a house owned by the Federal Government, should a child living on that property be counted as a resident of Federal property? If a private business leasing Federal property is subject to local taxation, should children whose parents work on that property be considered federally-connected? The first, even though a taxable interest, is not strictly a leasehold. The second, which is a leasehold interest, has not been treated uniformly across the country.

Even if a uniform rule could be drawn covering most situations, this adjustment in revenue burden may not bear a rational relationship with the service burden caused by the cost of educating federally-connected children. The recommendations of this Commission regarding amount of compensation are calculated on the basis of service burden rather than revenue burden. Following that same rationale it would appear to be most reasonable to include in the count of federally-connected children all children connected with Federal property, whether or not that property has taxable interest, and then, in order to avoid overcompensation, deduct revenues received by local educational agencies from taxation of those interests from the amount of the entitlement of that agency. This approach would avoid the administrative problems of determining whether there are taxable interests in Federal property and the extent to which those interests may or may not affect the status of individual children. On the basis of this rationale, the recommendation is made.

Flight Training Schools. The flight training school exception appears to be a vestige of a policy developed because of post-war transfers of Federal air stations to local municipalities. The Commission has received no evidence that a major problem in this area continues and, therefore, there appears to be no policy reason for continuing that exception.

Jurisdiction Other Than States. One class of property excluded is property owned by the United States located in the District of Columbia or in Puerto Rico, Guam, the Virgin Islands, American Samoa, and Wake Island. These jurisdictions are not States and are wholly within the governance of the Congress, so that the concept of a Federal burden for which State sovereignty requires compensation does not apply. This exclusion does not address the need for Federal assistance in these jurisdictions; it is based solely on the underlying theory for the Impact Aid Program. To include them would be inconsistent with the rationale for the program.

It is more appropriate that the Congress address the educational needs of the children in the schools of the District of Columbia and the outlying areas through other education programs and through direct appropriations to their local educational agencies.

Puerto Rico, as a commonwealth, may merit different treatment from that given to the other outlying areas; however, the status of the commonwealth is basically a political question which should be dealt with as a separate matter outside the Impact Aid Program.

The Federal Government owns such a substantial portion of the District of Columbia and spends so much money therein that no general formula for determining the actual burden could be made applicable to it. Ideally, the Congress ought to appropriate directly to the District sufficient funds for the operation of schools within the District as part of its Federal payment under the law authorizing home rule.

That issue has not been placed within the jurisdiction of this Commission.

Low-Rent Public Housing. With the exception of the question of low-rent public housing property, the previous studies of the Impact Aid Program did not address the issues involved in the definition of Federal property with the exception of "overpayments" resulting from taxable leasehold interests.

The tax-exempt status test would include, within the definition, two classes of property which have been controversial: low-rent public housing and property owned by the U.S. Postal Service which is not subject to local real property taxes. The question of whether payments should be made with respect to children residing on that property or whose parents are employed thereon is not properly addressed as a definitional question, but rather as a question of whether a burden exists, the amount of compensation, and priorities in payments when there are insufficient appropriations to satisfy entitlements.

However, since existing law presents the issue as a definitional question, it is dealt with in this report as such.

In examining whether it is equitable or reasonable to include children residing on low-rent public housing in the Impact Aid Program, the Commission has considered whether in fact federally-subsidized housing is a Federal "impact" which Impact Aid is designed to mitigate.

In so doing, the Commission has analyzed the long history of Federal support of public housing, and it has considered the nature of current Federal--compared with local--involvement in the finance and administration of public housing. (A summary of this study is included in Appendix L.)

Of specific importance to the Commission's inquiry into public housing is the payment by housing authorities of in-lieu of taxes payments to local governments. It has been argued that these in-lieu of taxes payments make Impact Aid payments for low-rent housing children unnecessary or excessive. Commission research does not bear this out. In fact, in-lieu of tax payments received per child by local educational agencies represent a fraction of Impact Aid payments per child; the in-lieu payments per child are a negligible portion of per-pupil expenditure. Furthermore, because in-lieu payments are made to local general units of government, dependent school districts may receive no part of the payment. Finally, over 12 percent of housing authorities make no payments in-lieu of taxes.

This study also addresses the amount of property tax revenues foregone in the country because public housing is, by operation of law, tax-exempt. These revenues foregone are part of the burden public housing places on a community.

Also of importance is the fact that localities are sometimes encouraged to develop public housing because other Federal grants--such as Community Development Block Grants--are conditioned on a suitable public housing program. This increases the Federal nature of public housing and undermines the argument that purely local decisions bring public housing to a community.

Payments on the basis of children residing on low-rent public housing has been an area of controversy for many years. The dispute over compensation for children residing on low-rent public housing under the Impact Aid Program has centered on whether those children are, in fact, federally-connected. The Ginsburg Report, completed in 1975, observed that "public housing is locally, rather than Federally owned," and that public housing projects "have been constructed in response to local government decisions under ground rules that were known in advance to them." For this reason, the Ginsburg report noted, "critics concluded that public housing is not imposed on a local area by the Federal government."[207/]

The Ginsburg report further noted that "public housing may represent a duplication of Federal funding efforts," since, in addition to Impact Aid, "the Federal government shares in the initial cost of building public housing units, guarantees debt service on bonds issued by local housing authorities, and makes annual contributions which subsidize payments in lieu of taxes."[208/]

Finally, the Ginsburg report relied on the fact that "long waiting lists" to which community residents add their names in order to qualify for public housing show that public housing does not draw "pupils into the community who would not otherwise be there."[209/]

207/ Lawrence L. Brown, III, Alan L. Ginsburg & Martha Jacobs, Impact Aid Two Years Later, An Assessment of the Program as Modified by the 1974 Education Amendments 21 (1978).

208/ Id.

209/ Id.

Based on these observations, the Ginsburg report concluded that

> inclusion of public housing children as eligible Impact Aid students is not consistent with the program's goal of providing compensation for Federally imposed burdens. Further, these payments do not provide an equitable distribution of funds to aid educationally needy children. This assessment does not deny...the importance of the Federal role in assuring educational opportunities for disadvantaged pupils. The point is that the Impact Aid program is simply not an appropriate vehicle for implementing this Federal responsibility.[210]

The 1969 Battelle Study concluded that "the construction of public housing units does not normally have a significant effect upon the costs of providing education in individual school systems."[211]

Battelle found from its questionnaire that "the average per pupil payment in lieu of taxes was $10.03 annually" in 1967 or 1968, an amount which "understate[s] the probable tax loss associated with public housing projects by an amount that is likely to be somewhat less than $100 per pupil." Impact Aid payments to cities in which public housing is concentrated, Battelle said, have local contribution rates "in the neighborhood of $400 per pupil," making a "Federal payment of $200 per pupil for each public housing child...excessive...." For this reason Battelle concluded "that it would be inappropriate to blanket public housing pupils into the present Impact Aid program."[212]

Others argue that low-rent public housing children are in fact federally-connected. Though public housing units are locally owned and operated, defenders of public housing argue, the Federal Government provides funds and technical assistance for the housing. Without the Federal funds, public housing would not exist. In fact, the United States Housing Act of 1937 defines families of low-income as those "who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use." Inherent in this is the idea that without the intervention of the Federal Government, private enterprise would not provide for those families of low-income. Thus it is arguable that but for the Federal housing policy, low-rent public housing as it is today would not exist.

Further, though community participation and local planning for public housing is required by Federal housing laws, school officials are seldom

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210/ Id. 24.

211/ Battelle Memorial Institute, 91st Cong., 2d Sess., School Assistance in Federally Affected Areas: A Study of Public Laws 81-874 and 81-815, House Committee on Education and Labor 145 (1970).

212/ Id. 147, 148.

part of the planning, it is argued. Thus public housing sites are chosen without the consideration of local educational agencies who must consider feeding patterns and desegregation requirements. These facts, it is argued, belie any overwhelmingly local nature for low-rent public housing.

To the argument that Impact Aid payments for low-rent public housing children duplicate in-lieu of tax payments, defenders respond that not only are in-lieu payments insufficient to cover property taxes lost to a city due to Federal law which requires that low-rent public housing be tax-exempt, but they often do not even cover the costs of services provided by the city pursuant to contracts with the housing authority. Furthermore, Federal funds for low-rent public housing go to the local housing authorities, not to the local educational agencies; in-lieu of taxes payments are made to the local government, not to the local educational agencies.

In view of these arguments, the Commission has conducted a survey of seven housing authorities across the country--Montgomery, Alabama; Peoria, Illinois; Chicago, Illinois; Los Angeles, California; New Orleans, Louisiana; Denver, Colorado; and Washington, D.C. These housing authorities have been chosen on the basis of regional distribution and size.

Some of the information gathered through this survey is presented in the following tables;[213/] additional data requested are not readily reduced.

Six housing authorities have stated that they do make payments in-lieu of taxes (PILOTs) annually to a local governmental body (city or county) which distributes the funds to various local agencies, including local boards of education. The seventh housing authority surveyed--Washington, D.C.--reported that their PILOT payments have been waived. Of the six, Denver claimed that while it usually makes PILOTs to the city annually, on March 18, 1980 it made its first payments since 1976. The lapse in payments was because their cooperation contract with the city provides that deductions be made for services to the city from the annual PILOTs; for the years mentioned, the amounts for the services and for the PILOT balanced out. Also, Chicago has not made a payment since 1978.

Three of the housing authorities did not have estimates of the amount of foregone tax revenues on their federally-assisted units; however, two housing authorities--Peoria and Washington,D.C.--estimated the foregone tax revenues for fiscal year 1980 to be $635,665 and $1,464,000, respectively. New Orleans estimated that there was no tax loss on the units due to the poor condition of the property prior to construction of the low-rent public housing. Similarly, Chicago estimated that the tax loss would be minimal since the projects were developed on property in blighted areas.

213/ See Attachments I and II, infra.

Six of the housing authorities stated that new tenants generally come from the immediate vicinity. Reasons for this varied from application requirements to a lengthy waiting list, which in itself acts as a deterrent to families considering migrating. Montgomery was the only housing authority of those surveyed which has applicants for low-rent public housing from the immediate vicinity and others from rural areas who must migrate into Montgomery in order to obtain affordable housing.

As shown in Attachment II, payments in-lieu of taxes represent only a small amount of the total Federal dollars a local educational agency receives on the basis of low-rent public housing children within its jurisdiction. The Commission's survey found that among the seven housing authorities surveyed, the average per-pupil payment in-lieu of taxes was $10.28 in fiscal year 1979 while the average per-pupil Impact Aid payment was $76.81 in fiscal year 1979. It is evident from these data that the argument that Impact Aid payments for low-rent housing children duplicate in-lieu of taxes payments has no basis.

When Public Law 874 was originally enacted, low-rent housing property was specifically excluded from the definition of Federal property on the grounds that the Federal housing program is "a form of Federal aid to the local communities." The House report explained that "[i]t was understood from the beginning, that full taxes could not be paid if the necessary low rentals were to be achieved and that the loss represented by the difference between full taxes and payments in lieu of taxes would represent the local contribution toward a joint Federal and local program...."[214]

However, in 1970, Public Law 91-230 amended the Impact Aid law to include low-rent housing in the definition of Federal property. The Senate report on that bill reasoned that children residing in low-rent housing have "as heavy an impact on local educational agencies as that of children considered to be federally connected under present law." That report also pointed out that inadequate "'in lieu of taxes' payments which are made to local governments...bear no relationship to the cost of providing education for the children residing in [low-rent housing]."[215] This reasoning is still valid today.

Thus children residing in low-rent housing projects are currently included in the Impact Aid Program not because of the housing projects' inherent tax-exempt status resulting from Federal ownership, but because of Federal law which renders them tax-exempt. Also, as the Senate report pointed out, low-rent housing children place a burden on local educational agencies. An underlying premise of the program is that Federal activities place a financial burden on local educational agencies by reducing local tax income for school purposes which trigger a "...Federal [obligation] to reimburse local educational agencies for financial burdens that it has imposed upon them by reason of Federal activity in the area."[216/] The Commission's study of federally-subsidized housing has shown that, but for Federal involvement, public housing would probably not exist. In addition, continuing Federal involvement with virtually daily operations of housing authorities belies a strictly local character of public housing. Thus it is argued that the Federal Government's housing policy--specifically the subsidy of low-rent public housing--can be considered a Federal activity. This, coupled with the legally tax-exempt status of public housing property, justifies Impact Aid payments on the basis of children residing on low-rent public housing.[217/]

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[214] H. Rep. No. 2287, 81st Cong., 2d Sess. 26 (1950).

[215] S. Rep. No. 91-634, 91st Cong., 1st Sess. 68 (1970).

The effect of low-rent public housing on education has been the subject of much discussion on the Commission and there is a substantial opinion that the Congress should review the entire question, either in the context of the housing laws of the United States or in that of the educational needs of the children residing in low-rent public housing. The Federal law which exempts this property from local taxation and the provisions thereof for clearly unrealistic in-lieu of taxes payments from shelter rents together operate to create a burden on schools educating these children. This appears to be an unnecessary burden created by defects in the housing laws.

This burden, which is real and substantial, when included in the Impact Aid Program has tended to distort the remainder of the program so that the total amount of Impact Aid entitlements is far greater than the amounts which the Congress has been willing to appropriate to pay those entitlements. This requires the setting of priorities for payments when funds are not sufficient to pay all entitlements and has complicated the program considerably.

There is considerable opinion that the housing laws should be revised to provide for a more realistic payment to local governments to cover the costs of all local services and that Federal subsidies should be adjusted to assist in covering those costs, with the result that the burden created by defects in the housing laws would no longer exist.

This issue is not within the mandate given this Commission and can not be addressed properly in this report. That being the case, the Commission must accept the existence of present housing laws and treat the burden created under them in the same manner as other Federal burdens.

[216/] H. Rep. No. 2287, 81st Cong., 2d Sess. 7 (1950).

[217/] It is worth noting that HUD, as a matter of policy, supports the inclusion of public housing in the Impact Aid Program. A recent letter from HUD's General Counsel to the Office of Management and Budget, included as Attachment III, testifies to this.

ATTACHMENT I

GENERAL INFORMATION--FEDERAL HOUSING ASSISTANCE SURVEY

HOUSING AUTHORITY	Montgomery, AL	Peoria, IL	Chicago, IL
Total annual subsidy	$ 2,662,114.00 (FY80)	$6,928,807.92 (FY80)	$68,879,100.00 (FY80)
Debt service received in FY 1980	$ 1,785,701.00 (FY80)	$2,707,498.00 (FY80)	$32,332,105.00 (FY80)
PILOT payments earmarked for the local educational agency	$ 11,196.59 (FY80) $ 12,566.13 (FY79) $ 12,324.82 (FY78) $ 17,024.98 (FY77) $ 18,258.61 (FY76) $ 18,052.69 (FY75) $ 16,331.18 (FY74) $ 12,726.38 (FY73)	$ 13,148.30 (FY80) $ 12,702.67 (FY79) $ 16,854.83 (FY78) $ 23,221.98 (FY77) $ 24,972.30 (FY76) $ 28,338.86 (FY75)	$1,290,301.91[†]
Number of federally-assisted units	2,995 units	2,018 in conventional units, 963 units in section 8 program	Approximately 40,000 families (including elderly and single persons)
Number of school-age children in federally-assisted projects	3,902 children	896 conventional units (section 8 program estimates unobtainable)	61,441 children (Based on 1970 Census data)
Number of applications on waiting list	Approximately 300 applications on hand	238 in conventional units, 800 on section 8 program list	Approximately 11,000 people
Average time a family must wait to be housed	6 weeks	conventional units, week to 60 days, section 8 program units, 6 wks.--1 year	1-10 years (very low turnover rate)

[†] The county treasurer's office distributed this payment on July 21, 1978. It represents the Board of Education's share of the PILOT payments received for the tax years 1973-1977. Nothing has been received since then.

ATTACHMENT I (cont.)

GENERAL INFORMATION--FEDERAL HOUSING ASSISTANCE SURVEY

HOUSING AUTHORITY	Los Angeles, CA	New Orleans, LA	Denver, CO	Washington, D.C.
Total annual subsidy	$ 5,173,650.00 (FY79)	$ 9,985,282.00 (FY79)	$ 3,363,140.00 (FY80)	$15,758,890.00 (FY80)
Debt service received in FY 1980	$ 4,734,283.00 (FY80)	$11,177,239.00 (FY80)	$ 4,187,467.00 (FY80)	$11,024,796.00 (FY80)
PILOT payments earmarked for the local educational agency	$ 337,027.89 (FY80) $ 360,748.61 (FY79) $ 316,619.71 (FY78) $ 270,577.14 (FY77) $ 236,709.72 (FY76) $ 219,112.19 (FY75)	$ 57,792.32 (FY79) $ 51,669.31 (FY78) $ 48,428.65 (FY77) $ 65,239.49 (FY76) $ 55,066.08 (FY75)	$ 25,433.95*	N/A (D.C. has waived payment for PILOT)
Number of federally-assisted units	8,213 units	13,965 units	6,271 units	12,534 units
Number of school-age children in federally-assisted projects	13,666 children	23,836 children	5,375 children	12,800 children
Number of applications on waiting list	Approx. 9500 people	7,325 people	Approx. 800-1000 people	Approx. 7,580 people
Average time a family must wait to be housed	3-4 years**	3-4 years	1-6 months	6 mos. - 16 yrs.*** (varies by size)

* This figure represents two-thirds of the PILOT payment received March 18, 1980.

** Average waiting period for 3-5 bedroom units is five years.

*** Efficiency: 4 yrs; 1 BR: 6-11 mos; 2 BR: 3.5 yrs; 3 BR: 6.5 yrs; 4+ BR: 16 yrs.

ATTACHMENT II

PAYMENTS RECEIVED BY LEA ON BASIS OF LOW-RENT PUBLIC HOUSING CHILDREN (FY 1979)

	PILOT Dollars/LRPH Child		874 Dollars/LRPH Child		Total Fed. $/LRPH Children	
LEA	PILOT $ to LEA #LRPH children (housing authority figures)	PILOT $ to LEA SAFA's ADA for LRPH children	874 LRPH $ # LRPH child (housing authority figures)	874 LRPH $ SAFA's ADA for LRPH children	874 LRPH $ & PILOT $ # LRPH child. (housing authority figures)	874 LRPH $ & PILOT $ SAFA's ADA for LRPH children
Mont. Pub. Schs.	$12,566.13 3,902 =$3.22	$12,566.13 3,170.53 =$3.96	$245,332.17 3,902 =$62.87	$254,332.17 3,170.53 =$77.38	$257,898.30 3,902 =$66.09	$257,898.30 3,170.53 =$81.34
Peoria Pub. S.D. No. 150	$12,702.67 3,902 =$3.22	$12,702.67 1,314.24 =$9.67	$108,125.46 896* =$120.68	$108,125.46 1,314.24 =$82.27	$120,828.13 896* =$134.85	$120,828.13 1,314.24 =$91.94
Chicago Pub. Schs. No. 299	$1,290,301.91+ 61,441** =$21.00	$1,290,301.91+ 34,211.26 =$37.72	$2,814,636.99 61,441** =$45.81	$2,814,636.99 34,211.26 =$82.27	$4,104,938.90 61,441** =$66.81	$4,104,938.90 34,211.26 =$119.99
Los Angeles Unif.S.D.	$360,748.61 13,666 =$26.40	$360,748.61 12,138.24 =$29.72	$1,059,259.97 13,666 =$77.51	$1,059,259.97 12,138.24 =$87.27	$1,420,008.50 13,666 =$103.91	$1,420,008.50 12,138.24 =$116.99
Orleans Parish Sch. Bd.	$57,796.32 23,836 =$2.42	$57,796.32 12,023.25 =$4.81	$918,647.02 23,836 =$38.54	$918,647.02 12,023.25 =$76.40	$976,439.34 23,836 =$40.96	$976,439.34 12,023.25 =$81.21
Denver S.D. No. 1	$25,433.95† 5,375 =$4.73	$25,433.95† 4,131.01 =$6.16	$583,107.93 5,375 =$108.49	$583,107.93 4,131.01 =$141.15	$608,541.88 5,375 =$113.22	$608,541.88 4,131.01 =$147.31
Dist. of Col. Pub. Schs.	$0" 12,800 =$0.00	$0" 10,104.45 =$0.00	$1,072,507.30 12,800 =$83.79	$1,072,507.30 10,104.45 =$106.14	$1,072,507.30" 12,800 =$83.79	$1,072,507.30" 10,104.45 =$106.14

* This figure only represents the schoolage children in conventional units. Peoria Housing was unable to provide a figure from the section 8 program, hence the wide disparity between this figure and the figure from SAFA.

** The Chicago Housing Authority has based this figure on 1970 Census data, hence the wide disparity between this figure and the figure from SAFA.

+ PILOT payments received for the tax years 1973-1977. No payments have been received since then.

† The city treasury received on March, 3, 1980, its first "PILOT" payment from the housing authority since 1976, of which the schools will receive about two-thirds--this figure is an approximation and can only be used as somewhat a comparison.

" The D.C. Government has waived "PILOT" payments.

3/9/79

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

MAR - 9

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Attention: Ms. Celeste Wilder

Re: HEW draft bill, "To make certain miscellaneous amendments to the Elementary and Secondary Education Act, the Emergency School Aid Act, the Act of September 30, 1950, P.L. 93-380."

Dear Mr. Frey:

This is in response to your request for the views of this Department on the above HEW draft legislative proposal.

Section 7(a)(1) of the draft would repeal subsection 3(b) of the Act of September 30, 1950. Under subsection 3(b), children who reside with their parents in federally assisted low-rent public housing are included among those to be taken account of in computing the level of Federal assistance to be made available to school agencies under the Federal Impact Aid Program.

We strongly object to the deletion of this particular category of children. Our understanding of the effect of such a repeal is that it would reduce the level of Federal impact aid attributable to residents of low-rent public housing from approximately $80 million per year to approximately $1 million per year.

This drastic reduction in Federal aid would be suffered solely by school districts in communities which have, in the past, responded to the Nation's long standing policy of encouraging a commitment by local governments in providing decent, safe and sanitary housing for its lower-income citizens. With respect to low-rent public housing, this commitment takes the form of an agreement by the locality to forego the imposition of full property taxes and accepting instead a lesser payment in lieu of taxes (PILOT).

The loss in potential revenues which localities might have otherwise to support their schools is, of course, the major rationale for having a Federal Impact Aid Program in the first place. Therefore, not taking into account public housing residents in determining such aid not only undercuts our National housing policy but also is inconsistent with the basic purpose of, and justification for, any type of impact aid.

The injustice of this repeal becomes dramatically apparent when it is recognized that the school districts and the communities which will be most severely damaged are precisely those which have cooperated most in carrying out our national housing policy. These are also, in large part, those distressed communities who can least afford to make up from their own resources any cut in Federal aid and those upon whom the President's national urban policy is concentrated.

Sincerely,

/s/ Edward W. Norton

Edward W. Norton
Acting General Counsel

IV. WHAT IS THE OBLIGATION OF THE FEDERAL GOVERNMENT WITH RESPECT TO THE EDUCATION OF CHILDREN CONNECTED WITH FEDERAL PROPERTY?

The Impact Aid Program or a similar program may be viewed as an obligation. That obligation arises from a need to preserve a federal system of government. The obligation runs to institutions within that system, the political subdivisions of the States, charged by them with a governmental function historically within the prerogatives of the States--education.

In summary, that obligation is that the Federal Government ought not exercise its power to acquire real property or otherwise exempt real property from taxation and use that property in such a manner as to impair substantially the legitimate functions of the States. One means of balancing the power of the Federal Government against the rights of the States to carry out their legitimate functions is to compensate them for the adverse effects of the exercise of that power.

Obligation as the Owner and User of Land

In the case of education, the possible conflict between the power of the Federal Government and the right to carry out State functions is especially potent because the States have delegated their historical responsibility for education to subdivisions and have provided, to a great extent, that those subdivisions--local educational agencies--derive their revenues from taxation on real property.

The States have also required that local educational agencies educate all children within their jurisdictions, so that children living in the school districts of those agencies must be provided a free public education. Thus, local educational agencies have a revenue burden arising from the loss of revenue from tax-exempt real property and a service burden arising from a requirement that local educational agencies educate children residing on, or whose parents are employed on, that property.

The study regarding the obligation to provide for an adequate level of education is based upon an increasingly evident shift in emphasis toward looking at the educational needs of federally-connected children. This required an examination of the obligation of the Federal Government with respect to the education of federally-connected children, together with the obligation to ameliorate the loss caused by ownership of tax-exempt property, which form the basis of the Impact Aid Program. That double obligation is inherent in that the Federal Government, as a landowner and an employer, is to be treated, to the extent practicable, as private landowners and employers are treated under the laws of the States.

The Federal Government, as an employer, has recognized for many years an obligation for the education of the children of some of its employees. In 1821, before a policy supporting public education became established throughout the United States, the Congress approved a code, developed by the War Department, for the establishment and support of schools for the education of children of Federal employees on military posts.[218]

In the 1930's, the Congress made special provision for the education of children of employees of the Tennessee Valley Authority, the Veterans' Administration, the Army Corps of Engineers, and the Departments of Commerce, Interior, and Justice.[219]

During World War II and, later, during the transition from war to peace, the Congress provided for the maintenance and operation of school facilities in areas affected by Federal activities by enacting several pieces of legislation[220] designed to assist local educational

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218/ Lloyd E. Blauch and William L. Iverson, Education of Children on Federal Reservations, Staff Study No. 17, The Advisory Committee on Education 19 (1939) [hereinafter cited as Blauch].

Legislative Reference Service, Library of Congress, Education of Children Living on Federal Reservations and in Localities Particularly Affected by Federal Activities, Senate Committee on Appropriations, 81st Cong., 1st. Sess. 6-7 (Comm. Print 1949) [hereinafter cited as 1949 Comm. Print].

Catherine Ehrmantraut Martini, A Study of the Effect of Federal Government Installations on School Facilities in Selected Areas, at Preface, 20 (1948) (unpublished M.A. thesis in American University Library) [hereinafter cited as Martini].

See Appendix P entitled "History of the Federal Obligation Toward the Education of Federal Civilian and Military Dependents."

219/ Blauch, supra note 218, at 46.
1949 Comm. Print, supra note 218, at 7.
Martini, supra note 218, at 26.

220/ Some of the major legislation enacted during this period included:

Lanham Act, Pub. L. No. 76-849, 76th Cong., 3d Sess., §§1-14, 54 Stat. 1125-1128 (1940) [covering October 14, 1940 through June 30, 1941] (amended by Lanham Act, Title I, Pub. L. No. 77-409, 77th Cong., 2d Sess., §§1-9, 56 Stat. 11-12 (1942)); Lanham Act, Title II, as amended by Pub. L. No. 77-137, 77th Cong., 1st Sess., §3, 55 Stat. 361-363 (1941) [covering June 28, 1941 through June 30, 1946]; Lanham Act, Title II, as amended by Pub. L. No. 79-452, 79th Cong., 2d Sess., 60 Stat. 314 (1946) [covering June 26, 1946 through June 30, 1947]; Landis Act, Pub. L. No. 80-317, 80th Cong., 1st Sess., 61 Stat. 716-717 (1947) [covering August 1, 1947 through June 30, 1948]; Landis Act, Pub. L. No. 80-837, 80th Cong., 2d Sess., 62 Stat. 1110 (1948) [covering June 29, 1948 through June 30, 1949] (amending 61 Stat. 716-717 (1947)).

agencies on an ad hoc basis.[221] This congressional action indicated:

> ...that the Congress has given recognition to the fact that certain activities of the Federal Government affect seriously the ability of some school districts to finance school services by causing substantial increase in population in a relatively short period of time and by removing real property from the tax rolls.[222]

The Impact Aid Program was designed to replace these single purpose authorizations with a uniform policy toward the education of children of Federal employees.[223]

Legislative history of the original Impact Aid law indicates that the Congress found that the laws of the States and their subdivisions have, through reliance on real property taxes, placed upon the owners and users of real property an obligation for the financial support of public education. The relevant Committee Reports state that the "United States has become an industrialist, landlord, or a businessman in many communities" by owning and using land there. Because that land is tax-exempt, however, the Federal Government has not accepted "the responsibility of the normal citizen in a community" for financial support of public schools.[224] Thus the Congress enacted Public Law 874 to operate under existing school finance patterns in the States as a device for Federal compliance with the obligation of landowners to support public education.[225]

The Commission has learned through its hearings that local educational agencies across the country consider the Federal Government as having an obligation to provide for the education of federally-connected children. Local educational agencies addressing the issue of the financial responsibility of the Federal Government toward the education of federally-connected children consistently argued that when the Federal Government acts as an employer and landowner, it should pay for local government services as other employers and landowners do. Further, representatives of local educational agencies testified that since its inception the Impact Aid statute has expressed a Federal concern for the education of children of its employees. The hearings reflect a general belief that, in addition to its purely financial obligations, the Federal Government is obligated to ensure that children of Federal employees have access to a public education as other children have.

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[221] 1949 Comm. Print, supra note 218, at 2, 7-11. Martini, supra note 218, at 12-15.

[222] 1949 Comm. Print, supra note 218, at 14.

[223] Id. 15, 60-61.

[224] It should be noted that, even though there are no explicit cross-references between the Lanham Act and the amendments to 40 U.S.C. 255 (which permitted Federal acquisition without State consent and the concomittant transfer of jurisdiction), the simultaneous consideration of the two measures would appear to support a contention that Federal measures to provide for the education of federally-connected children in public schools were enacted in the context of greatly expanded Federal activities without the assumption of Federal responsibility for jurisdiction over them.

[225] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 1 (1950).

Children Residing on Indian Lands

With regard to most federally-connected children, the Federal Government has a responsibility based on its role as an employer of the children's parents or on its ownership of the real property on which they reside. With regard toward the education of Indian children, the Federal Government has a unique obligation based on treaties[226/] and legislation.[227/]

The Impact Aid program, which, since 1958, has included all children residing on Indian lands within its purview and, since 1974, has presumed that their parents both live and work on Indian lands, now constitutes a major part of the Federal effort to meet the Federal obligation for the education of Indian children.[228/]

Children residing on Indian lands represent a different issue from that of all other federally-connected children. The same principles regarding State and local laws cannot be used in evaluating the Impact Aid Program for these children as are used for other children. In fact, Indian children were not even part of the program in 1950, so that the original principles of the program may not be appropriately applied to them.

There is no evidence in the legislative history of Public Law 874 that there was an intention that the inclusion of children residing on Indian lands be related to the satisfaction of treaty obligations to Indian tribes with payments under the Impact Aid Program. However, payments with respect to entitlements based on children residing on Indian lands

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[226/] Indian Education Task Force Five, Final Report on Indian Education, American Indian Policy Review Commission, U.S. Cong. 61-73, 314-415 (Comm. Print 1976). [Hereinafter cited as Indian Task Force Report.]

[227/] Chap. 84, Sess. II, 3 Stat. 516 (1819).

[228/] The second sentence of section 3(a) of Public Law 874, as revised in 1974 (section 305 of Public Law 93-380), provides that in making a determination of the number of military "A" children for any local educational agency, the number of children residing on Indian lands are to be included.

now constitute approximately one-sixth of the payments made under the program. Payments under Public Law 874 provide more funds for the education of Indian children than any other single Federal source. The result is, intended or not, if the Federal Government is satisfying those obligations at all, a major part of that satisfaction is had through the Impact Aid Program--especially since title III of Public Law 874 was added by the Indian Education Act in 1974.

On the basis of evidence available to the Commission, it appears that more Federal funds are being expended for the education of Indian children through the Impact Aid Program than any other Federal program. For this reason the Commission found it necessary to review the history and nature of the Federal responsibility for the education of Indian children and to determine the extent to which the Impact Aid Program should be considered a part of that responsibility.

The following table illustrates the percentage of school revenues in States in which local educational agencies receive Impact Aid payments due to Indian lands for the school year 1978-79.

PERCENTAGE OF SCHOOL REVENUES FOR SCHOOL YEAR
1978-79 IN STATES IN WHICH LOCAL EDUCATIONAL AGENCIES
RECEIVE IMPACT AID DUE TO INDIAN LANDS

	Federal	State	Local		Federal	State	Local
1. Alaska	15.3	66.0	18.7	14. Montana	8.4	51.5	40.1
2. Arizona	8.3	42.9	48.8	15. Nebraska	6.9	16.8	76.3
3. California	12.0	64.9	23.1	16. Nevada	4.8	34.0	61.2
4. Colorado	4.9	36.9	58.2	17. New Mexico	16.3	67.0	16.7
5. Florida	9.4	56.1	34.5	18. North Carolina	14.5	67.0	18.6
6. Idaho	12.5	46.9	40.5	19. North Dakota	8.4	46.1	45.6
7. Illinois	10.7	39.6	49.7	20. Oklahoma	11.8	55.7	32.5
8. Iowa	5.8	38.9	55.3	21. Oregon	7.2	30.3	62.5
9. Kansas	12.2	46.7	41.1	22. South Dakota	12.5	14.6	73.0
10. Maine	7.6	47.1	45.2	23. Utah	8.8	54.0	37.2
11. Michigan	6.5	44.8	48.7	24. Washington	9.5	61.3	29.2
12. Minnesota	5.9	54.5	39.6	25. Wisconsin	4.3	36.5	59.2
13. Mississippi	24.7	52.4	22.9	26. Wyoming	6.2	28.1	65.7

Source: Bureau of Indian Affairs, Department of the Interior, Impact Aid--P.L. 81-874 as revised by Title XI, Part A, Sec. 1101 (An Information Booklet for Indian Parents and Tribal Officials) 8 (1979).

The Commission's review indicates that education for Indian children was a concern of European immigrants even in colonial times. The first non-Indian efforts to educate Indian children were made by the missionaries in early colonial times in the hope of civilizing the Indians and converting them to Christianity. Their efforts resulted not only in teaching the Indians the rudiments of reading, writing, and arithmetic but also in establishing more than 15 schools which were subsidized by private and governmental funds. In addition, educational efforts occurred at the higher education level, as is evident by the early programs at Dartmouth, Harvard, and William and Mary. Moreover, the early educational activities of the 17th and 18th centuries influenced such future government policies towards the Indians as missionary-supported civilizing efforts, treatymaking, regulation of trade and intercourse with Indians, and the precedence of national over local jurisdiction for Indian affairs.

Under the Articles of Confederation, ratified in 1781, the Federal Government had "the sole and exclusive right and power of...regulating the trade and managing all affairs with the Indians, not members of any of the States."[229] Thereafter, with the reorganization of the government under the United States Constitution, the Federal Government was given the distinct and sole authority to manage Indian affairs. Article I, Section 8, known as the "Commerce Clause," declares:

> The Congress shall have power...to regulate commerce with foreign nations and among the several states and with the Indian tribes.

Thus, the Congress was given authority to regulate trade with the Indians and the President was empowered to negotiate treaties with the tribes, subject to congressional approval. The numerous treaties signed with Indian tribes, the Commerce Clause of the Constitution, and statutes concerning Indian education have become the framework for the role of the Federal Government in educating the Indians.[230]

The first major policy guiding the Federal Government's political dealings with the Indians was treatymaking. The educational activities of the Federal Government contingent on treaty agreements with the Indian tribes began with the treaty of December 2, 1794, with the Oneidas, Tuscarora, and Stockbridge Indians, and ended in 1868. During this period more than one hundred treaties were signed which contained educational provisions.[231] Many treaties were very specific about the type of educational services which the government would provide; others simply made general provisions for the purposes of education, designating a certain amount or creating a fund to fulfill the obligations. These provisions included promises for general education purposes, teachers' salaries, construction and maintenance of school buildings,

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229/ Theodore Fischbacher, A Study of the Role of the Federal Government in the Education of the American Indian 37 (1967) (doctoral dissertation, Arizona State University) (reprinted in 1974) [hereinafter cited as Fischbacher].

230/ Indian Task Force Report, supra note 226, at 29.

231/ See Attachment I for a chronological list of treaties made between Indian tribes and the United States Government containing educational provisions.

support of manual labor and industrial schools, instruction in agricultural, mechanical, and industrial arts, school supplies and materials, and annuities or general funds for education.

The Trade and Intercourse Act of 1802[232] is considered the first piece of substantive legislation by which the United States assumed responsibility for and committed Federal funds for social and educational services for the Indians. Section 13 of the Act authorized an annual appropriation of $15,000.

> While the specific expenditures of this fund [were considered] discretionary with regard to items purchased and presented to the Indians, it [was] not a discretionary fund with respect to the fulfillment of the treaty obligations by the United States to protect the Indians and to preserve the peace.[233]

On March 3, 1819, the Congress created the Civilization Fund[234] and authorized an annual appropriation of $10,000 to religious groups and interested individuals who would work and teach among the Indians. This act represents the "first legislative action taken by the United States which does not refer to any treaty or treaty-related responsibility, but instead assumes for the United States a general obligation for the civilization of the Indians [and]...extends the Federal responsibility for Indian education...to all tribes."[235]

> The courts have held that this statute covers all tribes whether they held any treaty relations with the United States or not and from this statute comes the authority of the federal government to provide services for all Indians, regardless of location or previous legal relationship with the United States.[236]

However, the encouraging effects of the Civilization Act were hampered as a result of the Indian Removal Act of May 28, 1830, which initiated the government's policy of forceful evacuation of the Indians from their ancient patrimony by providing for "an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi." The sum of $500,000 was appropriated by the Congress to cover the anticipated expenses.[237]

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[232] 2 Stat. 139.

[233] Vine Deloria, Jr., *Legislative Analysis of the Federal Role in Indian Education* 8 (1975) [hereinafter cited as *Deloria's Legislative Analysis*].

[234] 3 Stat. 516. "This Act establishing the Civilization Funds illustrates the use of the term 'civilization' by the Indian Department: '...to employ capable persons of good moral character to instruct them in the mode of agriculture suited to their station; and for teaching their children in reading, writing and arithmetic and performing such other duties as may be enjoined...'" (*Indian Task Force Report*, *supra* note 226, at 62, n.4.)

[235] *Indian Task Force Report*, *supra* note 226, at 342.

[236] *Deloria's Legislative Analysis*, *supra* note 233, at 12.

Those Indian tribes which had advanced the farthest toward white acculturation were the most seriously affected, for the improvements made upon their lands and the educational facilities which they had been provided all had to be sacrificed to the land-hunger of the new Americans determined to displace the first Americans.

The 1850's and 1860's marked the era of transcontinental migration of the Indians as the Federal policy of reservation settlement was being enforced. The overriding concern of the Federal Government at the end of the Civil War was to "clean up" the Indian Bureau and to bring remaining "hostile" Indians onto reservations. In an effort to remove the position of Indian agent from political influence, President Grant intitiated a Board of Indian Commissioners in 1869. This inspecting and advisory body was responsible for hiring reliable Indian agents of high "Christian character." These agents were responsible for promoting educational facilities and programs to civilize the Indians. In 1870, after a review of Indian reservations and schools, the Board of Indian Commissioners called on the Congress for a policy of more direct Federal involvement in the operation of schools for Indians; they noted that the Commissioner of Indian Affairs had remarked in 1855 that removal from place to place had prevented Indians from acquiring settled habits or a taste for civilized pursuits.

The years from 1870 to 1887 are referred to by writers on Indian affairs as the Reservation Period because during that sixteen-year period the Government vigorously pursued the practice of segregating the Indians within restricted areas and made the first serious attempts to educate them.[238]

A major policy change in Indian education resulted from the passage of two general appropriations bills in the Reservation Period--the first in 1870 and the second in 1871. The act of 1870 provided an unprecedented $100,000 "for the support of industrial and other schools among the Indian tribes not otherwise provided for...."[239] This act brought Indian education more directly under the control of the Indian Office and stimulated the establishment of government schools. The 1871 act prohibited the making of further treaties with Indian tribes and ended their independent status;[240] they would thereafter be regarded as wards of the United States.[241] Most of the treaties previously negotiated with Indian tribes had contained education provisions; therefore, the $100,000 appropriation was intended to provide for the remaining tribes and to furnish a means by which the Government could meet its obligation to provide educational facilities and teachers for Indian children. Early in the Reservation Period (1873) the Civilization Act was repealed, the fund aiding church schools was withdrawn, and by means of a new system of contracts with all schools receiving Federal subsidies, Indian education was gradually brought more directly under the control of the Indian Office. The Congress reinforced this control by authorizing the appointment of an Indian School Superintendent. Under the 1870 appropriation act, the Indian Bureau established day, boarding, and industrial training schools--all with an emphasis on basic skills in English, arithmetic, mechanical arts, and farming. Indian culture, religious values, and tribal environment were purposely damaged by these schools which were designed to assimilate Indian children into the white community. To reinforce the assimilation concept, the first non-reservation boarding school for Indians opened independently at Carlisle, Pennsylvania (1879).

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[237] 4 Stat. 411, 412.
[238] *Fischbacher*, *supra* note 229, at 83.
[239] 16 Stat. 335.

By the close of the Reservation Period there were several different categories of schools in operation:

Day Schools:

- established and supported by the Federal Government
- supported by contract with religious societies
- mission schools established and supported by religious societies

Boarding Schools:

- located on reservations and controlled by agents
- independent schools --
  - supported by general appropriations
  - supported by special appropriations
- contract schools --
  - supported by general appropriations
  - supported by special appropriations
- mission schools established and chiefly supported by religious associations

State and Tribal Schools:

- Indian schools of New York State
- tribal schools of Indian territory[242]

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[240] 16 Stat. 544, 566. While the Congress formally ended treatymaking with the Indian tribes in 1871, for the next 40 years the Congress did make "agreements" with the tribes which have been interpreted as treaties by Federal courts. Although these agreements were identical to the treaties in format, they placed more emphasis on the rights of individual tribal members rather than on the rights of the tribal groups themselves. (Deloria's Legislative Analysis, supra note 233, at 22.)

[241] Fischbacher, supra note 229, at 81.

[242] Id. 110.

The period from 1887 to 1934 is referred to as the Allotment Period as a result of the passage of the Dawes Act of 1887 which initiated a government policy of breaking down communally-held Indian lands and distributing them in allotments to individual Indians. This Federal policy was designed to counteract the influence of the Indians' communalistic culture in order to facilitate and to hasten their assimilation into the prevailing white American culture and promote individualism and pride in the ownership of one's own property.

The General Allotment Act of 1887,[243] commonly known as the Dawes Act, contained four provisions:

> 1) a grant of 160 acres to each family head, of eighty acres to each single person over eighteen years of age and to each orphan under eighteen, and of forty acres to each other single person under eighteen;
>
> 2) a patent in fee to be issued to every allottee but to be held in trust by the government for 25 years;
>
> 3) a period of four years to be allowed the Indians in which to make their selections after allotment should be applied to any tribe--failure of the Indians to do so would result in selection for them at the order of the Secretary of the Interior; and
>
> 4) citizenship to be conferred upon allottees and upon any other Indians who had abandoned their tribes and adopted the habits of civilized life.[244]

Unfortunately, "the 1887 law, which had been intended as a civilizing instrument...turned out to be primarily a means of depriving the Indian of his lands."[245] As a result of the Act:

> 1) the Indians lost 86,000,000 acres out of 138,000,000 or more than 60 percent of their original holdings;
>
> 2) the Indian lands became in many cases isolated, and, as a result, unprofitable for grazing purposes;
>
> 3) Indian heirship became a complicated problem as a result of division and subdivision of land into small tracts;
>
> 4) it inaugurated a common practice of leasing Indian allotments to white settlers;
>
> 5) it resulted in many legal complications; and

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[243] 24 Stat. 388.

[244] *Indian Task Force Report*, *supra* note 226, at 43.

[245] *Fischbacher*, *supra* note 229, at 118.

> 6) it broke up tribal organizations and thereby destroyed the one cohesive element within the understanding of the Indians and through which they were able to work.[246]

Criticism of the Dawes Act increased in the closing years of the 1800's and the beginning of the 1900's. Opponents objected to the privileged citizenship for the Indian which resulted from the allotment measure, declaring that it granted "privileges without responsibility."[247]

On May 8, 1906[248] the Congress modified the Dawes Act so as to defer the right of citizenship to the close of the trust period instead of having this privilege conferred at the outset. The Burke Act, as it is commonly known, also granted the Secretary of the Interior the authority, at his discretion, to grant earlier citizenship to those Indians whom he deemed competent to manage their own affairs.

Thereafter, on June 2, 1924, the Congress passed the Indian Citizenship Act,[249] also known as the Snyder Act, which declared "all non-citizen Indians born within the territorial limits of the United States" to be citizens.

Education policies during the Allotment Period were designed to prepare Indian youth for speedy entry into the mainstream of American life as evidenced by the expansion of off-reservation boarding schools, such as Carlisle, where the curriculum was intended to eradicate Indian cultural influences by transporting Indian pupils far from their homes and all reservations and surroundiung them with white people at the institutions who taught them to be Christian farmers and homemakers, as well as other "white" vocations.

During this period legislation was also passed to limit, and later to prohibit, the use of Federal funds to subsidize sectarian schools. These schools thereafter diminished in number and influence, and gradually Federal boarding schools became the dominant type of Indian educational institution. Compulsory education was also imposed during this period to extend literacy to all Indian children, and the merit system was introduced to improve the quality of the Indian Bureau's teaching personnel.

In 1901, Commissioner W.A. Jones called for a shift from the off-reservation boarding schools to on-reservation boarding and day schools, claiming that their programs were expensive and were not geared to the realities of Indian life. This attitude was also supported by the next Commisisoner, Francis Leupp, who campaigned to construct schools to "carry civilization to Indians...[not] the Indian to civilization."[250]

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[246] *Id.* 119.

[247] *Id.*

[248] 34 Stat. 182.

[249] 43 Stat. 253.

[250] *Indian Task Force Report*, *supra* note 226, at 46.

> 'To plant our schools among the Indians,' he declared, 'means to bring the older members of the race within the sphere of influence of which every school is the center. This certainly must be the basis of any practical effort to uplift a whole people.'[251]

Commissioner Leupp opposed the artificiality of the boarding schools and favored the community day school, which he anticipated would in time become ordinary public schools serving Indian and white pupils alike.

The next major change in educational policies came in 1910 when there was a shift in emphasis to public education. Contracts were made with local educational agencies for the public education of Indians. The Bureau of Indian Affairs (BIA) also mandated the adoption of public school curriculum in the government schools. By 1912, the number of Indian children in public schools was larger than in government schools.

Further encouragement to place Indian children in public schools came with the 1924 act declaring all Indians to be citizens. States were urged to treat Indians equally with other citizens and to encourage Indian people to accept the same duties and responsibilities as other citizens, including public education for their children.

The same year the "Committee of One Hundred"[252] issued its report on Indian affairs. The report devoted special attention to education and recommended increased Federal appropriations to meet the need for more competent personnel, better school facilities, increased enrollment of Indians in public schools, and scholarships for high school and college education. The BIA's response to the report was minimal; they increased the enrollment of Indian pupils in public schools and revised the curriculum in their schools to parallel that which was offered by public schools.

"The Problems of Indian Administration" (The Meriam Report), issued in 1928, pointed out the shocking conditions in the boarding schools and called for their closure. It recommended that Indian children be taught in the home environment of community day schools. The report also supported Indian cultural diversity and advocated the use of education as a tool to reinforce this. In response to the report, the BIA extensively revised its educational programs to include Indian cultural traditions in the basic curriculum, organized a community school system on the reservations, and increased Federal-State education contracts for Indian children attending public schools. Efforts were also made to afford qualified Indians the opportunity to attend college if they desired to continue their education.

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[251] Fischbacher, *supra* note 229, at 149-150.

[252] The "Committee of One Hundred" consisted of approximately one hundred public spirited citizens who were appointed by the Secretary of Interior in 1923 to review and recommend improvements in the field of Indian Service.

In 1929, a year after the Meriam Report was published, a National Advisory Committee on Education was organized by the Secretary of the Interior to advise President Hoover on the extent and kind of Federal involvement in education. In 1931 the Commission issued its report, "Federal Relations to Education," which contained several recommendations regarding Indian education:

> 1) provision of adequate facilities to attain the objectives of the educational policy already adopted by the Bureau of Indian Affairs;
>
> 2) utilization of public school facilities wherever practicable, maintaining of high standards, and provision of special Indian schools of improved type where necessary;
>
> 3) provision of schools of post-secondary grades for Indian youth of superior ability;
>
> 4) provision for a more extensive program of in-service training for Indian Service personnel; and
>
> 5) maintenance of a closer liaison between the Bureau of Indian Affairs and other Federal agencies concerned with the education, health, and welfare of Indians--notably, the Office of Education.[253]

As a result of these recommendations, a Federal program was developed which was designed to relate instruction to the practical needs and interests of Indian children in order to develop their independence and initiative in lieu of the erstwhile program whose primary aid was to acculturate the Indian to the prevailing white civilization.

The Indian cultural renascence of the next two decades, known as the Reorganization Period (1934-1953), had a profound influence on Indian education; curriculum was revised to emphasize Indian values and textbooks were oriented to the Indian and no longer to the white man and his standards and values.

The opening of this period was marked by the passage of two laws, both in 1934. The first was the Johnson-O'Malley Act,[254] which facilitated closer Federal-State cooperation in the education of Indians, and the second was the Indian Reorganization Act,[255] also known as the Wheeler-Howard Act, which reversed the Dawes Act of 1887 and provided loans to Indians to enable them to attend college or vocational and trade schools.

The Johnson-O'Malley Act authorized the Secretary of Interior to make contracts with State agencies for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians and to permit State agencies to use school buildings, hospitals, and other facilities, equipment, and property owned by the Federal Government. This law formalized a pattern of Federal-State activity in Indian education which continues today.

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[253] Fischbacher, supra note 229, at 162.

[254] 48 Stat. 596.

[255] 48 Stat. 984.

Just two months after approving the Johnson-O'Malley Act, the same Congress passed the Wheeler-Howard Act (the Indian Reorganization Act) whose principal purposes were to stop the alienation of Indian lands, to acquire land for landless Indians, to stabilize tribal organization, and to establish a policy of government support for undergraduate and graduate education for Indians. The educational loans provisions extended Federal assistance to Indians who wished to attend non-governmental vocational, trade, and high schools as well as colleges and universities.

During the Reorganization Period, the educational work of the Bureau of Indian Affairs was conducted through five types of schools:

1) public schools, which the Federal Government aided with tuition or other funds;

2) day schools, which were operated as community centers (on the reservations);

3) reservation boarding schools, which were primarily secondary and vocational institutions;

4) non-reservation boarding schools, which were essentially vocational in nature; and

5) contract schools, some of which were sectarian and some secular, some private and some State-supported.[256/]

This period of support for Indian tribes, their education, their culture and their economics ended after World War II under the belief that Indians were prepared for equal participation in American life. In 1949, the Hoover Task Force on Reorganizing the Executive Branch recommended that the "Federal Government relinquish its responsibility over Indians to the States." This recommendation led to the Federal policy of termination which was formalized by the Congress in 1953 in House Concurrent Resolution 108. The resolution's stated purpose was to free the Indians from Federal control and supervision, to end their status as Federal wards, and to make them subject to the same laws and to be entitled to the same privileges as other citizens which, in turn, would affect Indian education by shifting the responsibility for education from the Federal Government to the States.

House Concurrent Resolution 108 also represented a directive to the Secretary of Interior to suggest legislation designed to end the Federal Government's special relationship with the Indian tribes. Accordingly, during the second session of the Eighty-third Congress, ten termination bills were introduced, and six were approved.[257/]

[256/] Fischbacher, supra note 229, at 174.
[257/] 68 Stat. 250, 718, 768, 868, 1099.

Within three years of passage of House Concurrent Resolution 108, the Federal Government had initiated withdrawal procedures designed to terminate its trusteeship or wardship relation with nine separate Indian tribes. By 1961, according to a report by the Commission on Rights, Liberties and Responsibilities of the American Indian, eleven basic termination laws had been passed to implement the resolution.

The termination policy enunciated by House Concurrent Resolution 108 and the ensuing legislation "created 'a state of psychological shock' to Indians across the country, because to them it implied the renunciation of all Federal Indian treaties and the consequent responsibility by Indians to pay taxes, although they had bartered their lands for tax-free status."[258] Feeling abandoned by the Federal Government and unable to fend for themselves, many Indians and tribes sold their land (their only asset) in order to support themselves and their families. As a result many Indians were left homeless and destitute.

However, paradoxically, as a result of the Federal policy of termination, the BIA initiated several programs designed to bridge the cultural gap that still separated Indians from full assimilation into the mainstream of American life. While withdrawing from special activity on behalf of two-thirds of the Indian children who were sufficiently acculturated to profit from public school education, the BIA became involved more aggressively in the special education of the remaining one-third and their parents. The linguistic problem was being met by means of special primary classes for the youngest pupils, by secondary language programs and the use of language laboratories for the more advanced students, and by basic education programs for adults. The geographic problem of Indian children in isolated areas was being met by the use of trailer and hogan schools, as well as by the provision of boarding schools, on and off the reservations, and dormitories near public schools. The economic problem was being met in a variety of ways, notably by work-training programs for high school students, scholarship provisions for college students, and vocational training programs offered to adult Indians.

The climate of the country in this period may well have affected the treatment of Indians under Public Law 874, which was enacted in 1950 to provide financial assistance to local educational agencies in areas affected by Federal activities. For, while it is true that the Johnson-O'Malley Act provides some educational support for Indian children, it was not adequate. It is ironic that the students who were suffering the most from an inadequate education, and from being federally-connected, were specifically excluded from this legislation, and its subsequent amendments, for nearly eight years. While real property held in trust by the United States for Indians was included in the definition of Federal property under the Act, the definition of the child who could be served specifically excluded any Indian child eligible for educational services under a capital grant by the United States or under the supervision of or pursuant to a contract or arrangement with the Bureau of Indian Affairs.[259]

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[258] Fischbacher, *supra* note 229, at 192.

On August 8, 1953, the Congress passed Public Law 83-248 which amended Public Law 874 by adding a section 10 to the Act. This section authorized the governor of a State to elect to receive payments for Indian children under section 3(a) of the Act, provided that neither of the children's parents were regularly employed on non-Federal property. A definition of "Indian" was included which required one-fourth degree or more of Indian blood. However, this election meant that a State would receive either Johnson-O'Malley payments or 874 payments but not both. The rationale behind the limited inclusion of Indian children under section 3(a) was that the local educational agency would receive no taxes from those parents who were employed on the reservation or on Federal property.[260] Although this alternative eliminated a potentially discriminatory feature in the original legislation by allowing Indian children to be treated consistently with children of other Federal employees, no real change or substantially increased benefit was realized for Indian students by the amendment. In fact, Commissioner Glen L. Emmons reported in 1954 that "when the fifteen States receiving Federal aid under the Johnson-O'Malley Act were given the alternative of applying for this assistance under Public Law 874 (as amended) all elected to remain under the former contract status."[261]

Thereafter, section 10 was amended in 1955 (Public Law 84-832) and in 1956 (Public Law 84-949) to extend its provisions and was subsequently repealed by section 206 of Public Law 85-620 in 1958.

With the passage of Public Law 85-620 the definition of "child" under the Impact Aid law was amended so that Indian children were considered to be eligible children whose parents lived or worked on Federal property. Not only did the Act authorize full acceptance of Indian children as eligible recipients of 874 funding, but it also permitted local educational agencies to receive supplementary assistance under the Johnson-O'Malley Act for special services.

Elaborating on this shift in policy, House Report No. 1532 states:

> H.R. 11378 makes a significant change in the treatment of school districts educating Indian children, by enabling them to accept payments under Public Law 874 without forfeiting the right to obtain payments under the Johnson-O'Malley Act for special services and for meeting educational problems under extraordinary or exceptional circumstances. Under present law, the Governor of each State must make a determination, in advance, whether all

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[259] H. Rep. No. 2287, 81st Cong., 2d Sess. 25 (1950).

[260] S. Rep. No. 714, 83d Cong., 1st Sess. 5-6, 10, 20 (1953).

[261] *Fischbacher*, *supra* note 229, at 197.

> schools in a particular State shall seek assistance through Public Law 874 or the Johnson-O'Malley Act. H.R. 11378, in amending Public Law 874 in this connection, prevents any duplicate payments for the same services.[262]

Thus, local educational agencies were able to receive Federal assistance under both the Impact Aid Act and the Johnson-O'Malley Act based upon the residence of Indian children on tax-exempt land. Impact Aid funding was to cover maintenance and operational costs for educational services and Johnson-O'Malley funding supplemented the former by covering the costs for special services.

Another important change instituted by Public Law 85-620 concerned the provision in section 2 of the Impact Aid law which stated that "other Federal payments" must be deducted from the total amount a local educational agency receives under the Act. The amendment provided that payments under the Johnson-O'Malley Act did not constitute "other Federal payments" for this purpose.

In addition, since Indian children were now included in basic 874 funding, Public Law 85-620 amended the Act to exclude Indian children from the definition of Federal property for the purposes of section 6.

In the 1960's increased emphasis on self-determination brought attention to the need for widespread reform in Indian education. In 1968, under the leadership of Senator Edward Kennedy, the Special Subcommittee on Indian Education issued its report entitled, "Indian Education: A National Tragedy, A National Challenge." As a result of the Kennedy report, the Congress passed title IV of the Education Amendments of 1972, which is known as the Indian Education Act (Public Law 93-218). Section 411 of Public Law 92-318 amends Public Law 874 by redesignating the existing title III as title IV and by adding a new "Title III--Financial Assistance to Local Educational Agencies for the Education of Indian Children," commonly known as title IV, part A. The program was designed to award grants to local educational agencies to meet the special educational needs of Indian children.

As was the intent of the Congress, the passage of title IV marks a major change in the Federal policy toward the education of Indian children; Senate Report No. 92-346 of August 3, 1971, states in part:

> The public school education received by Indian students has been subsidized to some extent by the Federal Government since the 1890's. The purpose of the legislation appeared to be twofold. First, it gave legislative authority to the policy of integrating Indians into the white culture, thus establishing the goal of assimilation with the public schools as the vehicle for attaining that goal. Second, it established the precedent of providing subsidies to public schools in order to encourage them to assume the responsibility for Indian education.

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[262] H. Rep. No. 1532, 85th Cong., 2d Sess. 3 (1958).

> ...the Indian Education Subcommittee in 1969 found Indian education to be a national tragedy. Some of its general findings include the following:
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> > Dropout rates are twice the national average in both public and Federal schools. Some school districts have dropout rates approaching 100 percent;
> >
> > Achievement levels of Indian children are 2 to 3 years below those of white students; and the Indian child falls progressively further behind the longer he stays in school;
> >
> > One-fourth of elementary and secondary school teachers--by their own admission--would prefer not to teach Indian children;
> >
> > Indian children, more than any other minority group, believe themselves to be "below average" in intelligence, even though evidence is contrary to this belief.
>
> While local school districts themselves must share part of the responsibility, the Indian Education Subcommittee concluded that the Federal Government had failed to live up to its responsibilities in providing funds and leadership for assisting public school districts to better understand and meet the special needs of Indian students.
>
> We have concluded that our national policies for educating American Indians are a failure of major proportions. They have not offered Indian children--either in years past or today--an educational opportunity anywhere near equal to that offered the great bulk of American children. Past generations of lawmakers and administrators have failed the American Indian.

Thus, the policy underlining the title IV program marks a substantial break with the past pattern of assimilation and paternalism, and the supposedly humanitarian aims of turning Indians into "productive and civilized" American citizens. Instead, the law established, for the first time, the principle of Indian control over Indian education. The definition of Indian was broadened from the requirement of one-quarter blood under the Bureau of Indian Affairs programs to that of eligibility by descent to the second generation. This means that any student who has at least one grandparent who is a tribal member would be considered to be Indian under the title IV program. Of special import is the program's principle of community control over the education provided to Indians, as in the public schools through Parent Committees with an active advocacy voice and authority over the program's grant award. Alternative Indian schools run by Indians for Indian children could also be funded through the program.

In addition to the grant awards, the Act has some other significant provisions. The Act provides for the establishment of a bureau-level Office of Indian Education headed by an Indian as the Deputy Commissioner. The Office would administer the provisions of the title IV program. The Act also creates a National Advisory Council on Indian Education consisting of 15 Indian members appointed by the President. The Council's responsibilities would include reviewing and evaluating all Federal programs affecting Indian education, advising the Commissioner of Education, and providing technical assistance to local educational agencies and Indian organizations. A provision is also included in the Act which requires an assurance that Indian children will participate on an equitable basis in the school program of the local educational agency.

The Education Amendments of 1974, Public Law 93-380, amended section 3(a) of the Impact Aid law by inserting a provision which states that Indians are to be counted as military "A" children. As a result of this provision many local educational agencies became "heavily-impacted," meaning that the schools had an enrollment of 20 percent or more federally-connected "A" children. In fact, during fiscal year 1979, approximately 70 percent of all heavily-impacted school districts were so designated due to Indian enrollments.263/

The Education Amendments of 1978, Public Law 95-561, amended Public Law 874 by creating title XI—Indian Education, which is the product of the Advisory Study Group on Indian Education of the House Committee on Education and Labor. This special group was established by the Committee at the beginning of the 95th Congress to conduct research into, and propose needed legislation pertaining to, the field of Indian education. According to House Report No. 95-1137:

> The Advisory Study Group determined that the following problems, documented by hearings and on-site inspections, require immediate remedial legislation: (1) the lack of Indian involvement and participating in both public and Bureau school programs; (2) the need for increased dollars to meet the higher cost of supplying basic education programs for Indian children; (3) the lack of adequate funding to meet the special needs of Indian students, both educational and cultural, preferably through the Indian Education Act of 1972; and (4) the lack of Congressional direction for a coordinated educational system within the Bureau of Indian Affairs.... Additionally, the Committee has found reluctance on the part of some key Bureau employees to solicit and encourage input by Indian tribes,

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263/ According to the Division of School Assistance in Federally Affected Areas, Department of Education, during fiscal year 1979 there were 303 heavily-impacted school districts in the country, of which approximately 70 percent, or 218, served Indian 3(a)(2) and 3(a)(2)-special education students.

> organizations, and parents. These Bureau employees, Indian and non-Indian alike, still support the outdated concept of "doing things for the Indians." Congress must take immediate steps to see that this misguided policy already repudiated by the Indian Self-Determination and Education Assistance Act of 1975, is changed forthwith.[264]

Title XI, part A, made two major changes in the Impact Aid law. First, under the newly created subparagraph 3(a)(2)(D), the entitlement of an Indian "A" child would be increased to 125 percent of the ordinary entitlement. Second, under the provisions of the newly created subparagraph 3(d)(2)(D), the local educational agencies receiving these payments must establish policies and procedures to insure the participation of Indian parents and tribes in the education process. A complaint procedure was also established which would give any tribe, or its designee (which has students in attendance at a school of a local educational agency) the right to file a complaint against the local educational agency if the tribe feels the agency has not fulfilled its obligation to insure participation in the education process. Impact Aid funds can be withheld from the local educational agency until this complaint is resolved.

Parents of children served by a local educational agency must file grievances through the tribe or its designee. According to the amendment, the policies and procedures must insure that (1) Indian children claimed under section 3(a) of the Impact Aid law will participate on an equal basis in all school programs with all other children educated by the local educational agency; (2) tribes and parents of Indian children claimed under section 3(a) have been consulted and involved in the planning, development, and operation of programs assisted by Impact Aid funds; (3) tribes and parents of Indian children claimed under section 3(a) are afforded an opportunity to present their views with respect to the application, including the opportunity to make recommendations concerning the needs of their children and the method to be used to meet those needs; (4) that program plans and evaluations have been adequately disseminated to the tribes and the parents of the Indian children; and (5) that the tribes and parents are afforded a general opportunity to present their overall views on the education program and the degree of parental participation allowed.

The complaint procedure was amended in 1979 by Public Law 96-46. This amendment states that the tribe shall have the discretion in choosing complaints to file and that if students are withdrawn from the local educational agency under the complaint procedure, those children who choose to remain in the school of the local educational agency against whom the complaint is being lodged can continue to be funded, however, no future complaints may be filed on their behalf.

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[264] H. Rep. No. 95-1137, 95th Cong., 2d Sess. 112-113 (1978).

Consequently, not only has the Congress provided specifically for the equal educational opportunity for Indian children, for parental involvement, and for Indian control over Indian education, but it has also formally proclaimed that the amendment is based on the trust status of the Indian tribes with the Unied States and that the implementation of the rights set forth in title XI is clearly a part of Federal policy regarding the education of Indian children. Thus, these legislative changes and policy statements can be viewed as as renewed recognition that the Federal Government has an obligation to maintain and restore Indian culture, as opposed to its former termination and assimilation policies, and has given the Department of Education clear and definite responsibilities regarding Indian trust lands and the provision of funds for Indian education while recognizing Indian treaty obligations and the concept of Indian control over Indian education.

Commenting on the Education Amendments of 1978 in his testimony before the Commission on the Review of the Federal Impact Aid Program on May 29, 1980, Joseph C. Dupris, Executive Director of the Coalition of Indian Controlled School Board, stated:

> The newest, and paradoxically, the oldest, participant in Indian education is the tribal community. It is clear that the return of control of Indian education to the Indians is an overriding priority. The manner in which this is carried out should be decided by the tribal governments so that tribes may insure their continued control.

He further elaborated:

> ...all Federal Indian education programs should be directed toward giving Indian communities a direct legal voice in the operation of their own schools. We feel it is only through this legitimizing force of the Federal Government that a voice is guaranteed for the Indian parents and community in the education of Indian children.
>
> The central philosophy of the Coalition is that control of one's own educational system is vital to the development and survival of American Indians.

It is within this context that the Commission is recommending that there be a special policy in the Impact Aid Program regarding the education of Indian children. This policy is a reflection of the unique relationship between the United States and the Indian people and the obligations of the United States under the treaties with Indian tribes. That policy ought not be either in favor of, or opposed to, assimilation--for decisions respecting assimilation should be made by the Indian people. That policy ought, however, favor enabling the Indian people to perpetuate their existence as a national heritage--a heritage which, if exhausted, can never be renewed.

ATTACHMENT I

CHRONOLOGICAL LIST OF TREATIES MADE BETWEEN INDIAN TRIBES AND THE UNITED STATES GOVERNMENT CONTAINING EDUCATIONAL PROVISIONS

DATE	TREATY WITH THE	STATUTE	ARTICLE
Dec. 2, 1794	Oneida, et al.	7 Stat. 47	3
Aug. 13, 1803	Kaskaskia Tribe	7 Stat. 78	3
Aug. 18, 1804	Delaware Tribe	7 Stat. 81	2
Oct. 18, 1820	Choctaw Nation	7 Stat. 210	7,8
Aug. 29, 1821	Ottawa, et al.	7 Stat. 218	4
Sept. 18, 1823	The Florida Tribes of Indians	7 Stat. 224	6
Jan. 20, 1825	Choctaw Nation	7 Stat. 234	2
Feb. 12, 1825	Creek Nation	7 Stat. 237	7
June 2, 1825	Great & Little Osage Tribes	7 Stat. 240	6
June 3, 1825	Kansas Nation	7 Stat. 244	4,5
Aug. 5, 1826	Chippewa Tribe	7 Stat. 290	6
Oct. 16, 1826	Potawatomi Tribe	7 Stat. 295	3
Oct. 23, 1826	Miami Tribe	7 Stat. 300	6
Aug. 11, 1827	Chippewa, et al.	7 Stat. 303	5
Nov. 15, 1827	Creek Nation	7 Stat. 307	---
May 6, 1828	Cherokee Nation	7 Stat. 311	5
Sept. 20, 1828	Potawatomi Tribe	7 Stat. 317	2
Sept. 24, 1829	Delaware Nation	7 Stat. 327	*
July 15, 1830	Confederated Tribes of Sacs, et al.	7 Stat. 328	5
Sept. 27, 1830	Choctaw Nation	7 Stat. 333	20
Feb. 8, 1831	Menomonee Tribe	7 Stat. 342	4,5
Mar. 24, 1832	Creek Tribe	7 Stat. 366	13
May 9, 1832	Seminole Indians	7 Stat. 368	4
Sept. 15, 1832	Winnebago Nation	7 Stat. 370	4
Oct. 24, 1832	Kickapoo Tribe	7 Stat. 391	7
Oct. 27, 1832	Potawatomis of Indiana & Michigan	7 Stat. 399	4
Feb. 14, 1833	Creek Nation	7 Stat. 417	5
May 13, 1833	Quapaw Indians	7 Stat. 424	3
Sept. 21, 1833	United Bands of Otoes & Missourias	7 Stat. 429	4
Oct. 9, 1833	Four Confederated Bands of Pawnees	7 Stat. 448	5
May 24, 1834	Chickasaw Nation	7 Stat. 450	2*
Dec. 29, 1835	Cherokee Tribe	7 Stat. 478	10,11
Mar. 28, 1836	Ottawa, et al.	7 Stat. 491	4*
Sept. 17, 1836	Ioway Tribe, et al.	7 Stat. 511	3
Oct. 15, 1836	Otoes, et al.	7 Stat. 524	3
Oct. 21, 1837	Sacs & Foxes of Missouri	7 Stat. 543	2
Oct. 19, 1838	Ioway Tribe	7 Stat. 568	2
Mar. 17, 1842	Wyandot Nation	11 Stat. 581	4
Oct. 4, 1842	Chippewa of the Mississippi	7 Stat. 591	4

* Supplemental Articles.

DATE	TREATY WITH THE	STATUTE	ARTICLE
Oct. 11, 1842	Sac, et al.	7 Stat. 596	2
Jan. 4, 1845	Creek, et al.	9 Stat. 821	4,6
Jan. 14, 1846	Kansas Tribe	9 Stat. 842	2
May 15, 1846	Comanche, et al.	9 Stat. 844	13
June 5,17, 1846	Chippewas, et al.	9 Stat. 853	8
Oct. 13, 1846	Winnebago Tribe	9 Stat. 878	4
Aug. 2, 1847	Chippewa of the Mississippi	9 Stat. 904	3
Oct. 18, 1848	Menomonee Tribe	9 Stat. 952	4,5
Apr. 1, 1850	Wyandot Tribe	9 Stat. 987	---
July 23, 1851	Sisseton & Wahpeton Bands of Sioux	10 Stat. 949	4
Aug. 5, 1851	Mendewakanton & Wahpahoota Bands of Sioux	10 Stat. 954	4
Mar. 15, 1854	Otoe, et al.	10 Stat. 1038	4
Mar. 16, 1854	Omaha Tribe	10 Stat. 1043	4,13
May 6, 1854	Delaware Tribe	10 Stat. 1048	5,7
May 10, 1854	United Tribe of Shawnee Indians	10 Stat. 1053	3,6
May 12, 1854	Menomonee Tribe	10 Stat. 1064	3
May 17, 1854	Ioway Tribe	10 Stat. 1069	5,9
May 18, 1854	Kickapoo Tribe	10 Stat. 1078	2
May 30, 1854	United Tribes of Kaskaskia, et al.	10 Stat. 1082	7
June 5, 1854	Miami Tribe	10 Stat. 1093	3,4,12,13
Sept. 30, 1854	Chippewa of Lake Superior	10 Stat. 1109	4
Nov. 15, 1854	Rogue River Tribe	10 Stat. 1119	2
Nov. 18, 1854	Quilsieton & Nahelta Bands of Chasta, et al.	10 Stat. 1122	5
Nov. 29, 1854	Umpqua, et al.	10 Stat. 1125	3,6
Dec. 26, 1854	Nisqually, et al.	10 Stat. 1132	10
Jan. 22, 1855	Dwamish, et al.	12 Stat. 927	3,14
----------	Willamette Bands	10 Stat. 1143	2,3
Jan. 26, 1855	S'Klallams, et al.	12 Stat. 933	11
Jan. 31, 1855	Makah Tribe	12 Stat. 939	11
Feb. 22, 1855	Mississippi, et al. Bands of Chippewa	10 Stat. 1165	3,4
June 9, 1855	Yakama, et al.	12 Stat. 951	5
June 9, 1855	Walla Walla, et al.	12 Stat. 945	2,4
June 11, 1855	Nez Pierce Tribe	12 Stat. 957	5
June 22, 1855	Choctaw, et al.	11 Stat. 611	13
June 25, 1855	Tribes of Middle Oregon	12 Stat. 963	2,4
July 1, 1855	Quinaielt, et al.	12 Stat. 971	10
July 16, 1855	Confederated Tribe of Flathead, et al.	12 Stat. 975	5
July 31, 1855	Ottawa, et al.	11 Stat. 621	1,2
Aug. 2, 1855	Chippewa Tribe of Sault St. Marie	11 Stat. 631	2
Oct 17, 1855	Blackfoot, et al.	11 Stat. 657	10
Dec. 21, 1855	Molallalas Tribe	12 Stat. 981	2

DATE	TREATY WITH THE	STATUTE	ARTICLE
Feb. 5, 1856	Stockbridge, et al.	11 Stat. 663	4,7,8
Aug. 7, 1856	Creek, et al.	11 Stat. 699	5,7,8
Sept. 24, 1857	Four Confederated Bands of Pawnees	11 Stat. 729	3
Mar. 12, 1858	Ponca Tribe	12 Stat. 997	2
Apr. 19, 1858	Yancton Tribe of Sioux	11 Stat. 743	4
June 19, 1858	Mendawakanton & Wahpahoota Bands of Sioux	12 Stat. 1031	5
July 16, 1859	Swan Creek & Black River Bands of Chippewa, et al.	12 Stat. 1105	1,3
Feb. 18, 1861	Arapahoe, et al.	12 Stat. 1163	2
Mar. 6, 1861	Sac, et al.	12 Stat. 1171	5,6
June 24, 1862	Ottawa of Blanchard's Fork, et al.	12 Stat. 1237	6
June 28, 1862	Kickapoo Nation	13 Stat. 623	3
Mar. 11, 1863	Mississippi, et al. Bands of Chippewa	12 Stat. 2149	13
June 9, 1863	Nez Pierce Tribe	14 Stat. 647	4,5
Oct. 2, 1863	Red Lake, et al. Bands of Chippewa	13 Stat. 667	3
May 7, 1864	Mississippi, et al. Bands of Chippewa	13 Stat. 693	9,13
Oct. 14, 1864	Klamath, et al.	16 Stat. 707	4,5
Oct. 18, 1864	Saginaw, et al. Bands of Chippewa	14 Stat. 657	4
Mar. 8, 1865	Winnebago Tribe	14 Stat. 671	4
Aug. 12, 1865	Wollpahpe Tribe of Snake Indians	14 Stat. 683	7,8
Sept. 29, 1865	Great & Little Osage Tribes	14 Stat. 687	2,8
Oct. 14, 1865	Lower Brule Band of Sioux	14 Stat. 699	6
Mar. 21, 1866	Seminole Tribe	14 Stat. 755	3
Apr. 7, 1866	Bois Fort Band of Chippewa	14 Stat. 765	3
Apr. 28, 1866	Choctaw, et al.	14 Stat. 769	9,21,46
June 14, 1866	Creek Nation	14 Stat. 785	12,13
Feb. 18, 1867	Sac, et al.	15 Stat. 495	9
Feb. 19, 1867	Sisseton & Wahpeton Bands of Sioux	15 Stat. 505	6,7
Feb. 23, 1867	Senecas, et al.	15 Stat. 513	10,19,24
Mar. 19, 1867	Mississippi Band of Chippewas	16 Stat. 719	3
Oct. 21, 1867	Kiowa, et al.	15 Stat. 581	4,7,14
----------	Kiowa, et al.	15 Stat. 589	2
Oct. 28, 1867	Cheyenne, et al.	15 Stat. 593	4,7,13
Mar. 2, 1868	Ute Tribe	15 Stat. 619	4,8,10,15
Apr. 29, 1868	Sioux Nation, et al.	15 Stat. 635	7,9,13
May 7, 1868	Crow Tribe	15 Stat. 649	3,7,10
May 10, 1868	Northern Cheyenne, et al.	15 Stat. 655	[illegible],7
June 1, 1868	Navajo Nation	15 Stat. 667	3,6
July 3, 1868	Eastern Band of Shoshone, et al.	15 Stat. 673	3,7,10
Aug. 13, 1868	Nez Pierce Tribe	15 Stat. 693	3

Source: The Institute for the Development of Indian Law, "A Chronological List of Treaties and Agreements Made by Indian Tribes with the United States" (1973).

Heavily Impacted School Districts

The hearings indicate that as many as 500 local educational agencies are so dependent upon Impact Aid payments that a major reduction in those payments would result in the closure of their schools or, if not closure, serious reductions of their level of operation.

In the case of heavily impacted school districts with high concentrations of federally-connected children, the special educational needs of such children require special consideration.

The majority of students enrolled in heavily impacted school districts are associated with military installations, with a large number of married personnel, with both elementary and secondary school-age children. The heavily impacted school districts have a disproportionately high number of students whose parents are highly mobile or first tour personnel. Since there is a concentration of military children enrolled in heavily impacted schools, the problems associated with a fluctuating enrollment are compounded.

A heavily impacted school has to have a flexible curriculum and must be better staffed than other local educational agencies in order to properly serve the transient population on a yearly basis. This kind of flexibility and staffing to accomodate and educate military dependent students places a financial burden on the local educational agency. Few would contend that the local community should bear the Federal Government's share of the obligation and the cost to educate these children in attendance at the schools of heavily impacted local educational agencies.

If heavily impacted local educational agencies are forced to close, the federally-connected children in attendance there are deprived of a free public education, unless the Federal Government operates its own schools for them. In addition, nonfederally-connected children attending those schools are equally deprived of a free public education if they close. For this reason, it can be contended that otherwise nonfederally-connected children attending heavily impacted schools are federally-affected and, therefore, should be considered the subject of some Federal obligation.

There are two types of local educational agencies which have heavily impacted school districts: (1) those having a high percentage of federally-connected children in attendance at their schools, and (2) those having school districts in which the Federal Government exempts a substantial portion of the real property from local taxation.

Both of these types of local educational agencies need special consideration in the law. Existing law regarding local educational agencies with high percentages of federally-connected children is clearly inadequate to meet their needs. Existing law covering the latter situation was part of the original law and has not been substantially modified since.

The Commission has examined the need for special provisions for heavily impacted school districts.

Local Educational Agencies Having School Districts in Which the Federal Government Exempts a Substantial Portion of Real Property from Taxation.

Whereas section 3 of the law compensates local educational agencies for the cost of educating children associated with Federal land, and section 4 was intended to compensate local educational agencies for the costs associated with rapidly increasing enrollments caused by Federal activities, section 2 compensates local educational agencies for the mere presence of Federal property within the boundaries of their school districts.

Section 2(a) of Public Law 874 presently provides:

> Where the Commissioner...determines...for any fiscal year...
>
> (1) that the United States owns Federal property in the school district of such local educational agency, and that such property (A) has been acquired by the United States since 1938,...an assessed value aggregating 10 per cent or more of the assessed value of all real property in the school district (similarly determined as of time or times when such Federal property was acquired); and
>
> (2) that such acquisition has placed a substantial and continuing burden on such agency; and
>
> (3) that agency is not being substantially compensated for the loss in revenue resulting from such acquisition by increases in revenue accruing to the agency from the carrying on of Federal activities...
>
> then the local educational agency shall be entitled to receive ...such amount as, in the judgment of the Commissioner, is equal to the continuing Federal responsibility for the additional financial burden with respect to current expenditure placed on such agency by such acquisition.[265]

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[265] The major amendments to section 2 of Public Law 874 occurred in 1953, 1958, and 1968. Each of these amendments defined what payments, Federal or otherwise, may or may not be deducted from the amount of compensation a local educational agency receives under section 2.

Public Law 83-248 (August 8, 1953) restricted Federal payments deducted from a local educational agency's section 2 compensation to those which were made specifically for the federally-acquired property within the local educational agency.

Public Law 85-620 (August 12, 1958) excluded payments made under the Johnson-O'Malley Act from Federal payments deducted from a local educational agency's section 2 payment.

Public Law 90-247 (January 2, 1968) removed entirely the requirement that a local educational agency not be substantially compensated for federally-acquired property through other Federal payments. However, the amendment retained the requirement that the local educational agency's revenues not be increased as a result of Federal activity on the federally-acquired property.

Legislative history indicates that section 2 is "directed toward the situation in which the Federal Government has imposed a substantial and continuing burden on a local educational agency by acquiring a considerable portion of all real property in the school district, thus depriving the local educational agency of a considerable portion of its tax base."[266]

Apparently, the Congress did not intend to remedy all past burdens, but to assist only those local educational agencies that suffer serious current losses of tax revenue because of activities related to World War II.[267] This accounts for the limitation in section 2 to claims for property acquired by the Federal Government since 1938. Legislative history reveals:

> ...that the major problems caused by Federal acquisition of property occurred where property has been acquired since 1938. The beginning of the defense program initiated large Federal acquisitions of property which continued throughout and since the war. In general, localities have been able to adjust themselves to acquisitions that occurred before 1939. Likewise, there has been no increased financial burden where the property at present owned by the Federal Government was acquired by exchange for other Federal property in the same school district which the United States owned before 1939.[268]

The section 2 provision that a local educational agency can make a claim for payments under section 2 only if the Federal property owned constitutes ten percent or more of the assesed value of all real property (determined at the time of acquisition) in any school district of a local educational agency was established because the Congress considered that:

> ...where the assessed value of the property removed from the tax rolls amounted to less than 10 percent of the assesed value of the real property in the school district, the financial burden imposed by such removal is not sufficiently great to warrant Federal assistance...[269]

The statute also provides that a local educational agency must bear a "substantial and continuing" burden because of Federal acquisition of land. The Congress intended that the Commissioner of Education make a determination that the burden is "substantial and continuing", and provided guidance to the Commissioner for doing so:[270]

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[266] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 7 (1950).

[267] Opinion of the General Counsel, Education Division, Department of Health, Education, and Welfare, "Interpretation of section 2(c) of Pub. L. 81-874 (20 U.S.C. 237(c))" 2 (June 20, 1978) [hereinafter cited as Opinion of the Office of the General Counsel].

[268] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 8 (1950).

[269] *Id.*

> In determining whether a particular acquisition has placed a "substantial and continuing financial burden" on the local educational agency concerned, the Commissioner of Education may consider various factors indicating the actual current effect of the property acquisition upon the local agency in terms of its ability, with the sources of revenue available to it, to meet its educational costs, and the present impact of the acquisitions on its costs and its ability to operate. Thus, the Commissioner would compare school enrollments for which the agency is currently responsible at the time of acquisition, and compare revenues available immediately before and after the acquisition. Decreases in school enrollment, or decreases in school costs, or increases in revenues or reliance on sources other than real-property revenues may singly or in combination be taken into consideration in determining whether the financial burden is "substantial and continuing".[271]

Section 2 also requires that an agency cannot receive section 2 payments if it is being substantially compensated by other payments made with respect to Federal property.

> [This] is intended to prevent what might otherwise amount to double Federal payments for substantially the same purpose. The activities carried on with respect to the acquired property have resulted in new or increased revenues which substantially compensate the agency for the loss in revenue resulting from the acquisition.[272]

Also written into section 2 is a policy of neutrality with regard for the consolidation of school districts. Section 2(c) provides:

> Where the school district of any local educational agency shall have been formed at any time after 1938 by the consolidation of two or more former school districts, such agency may elect (at the time it files application...) for any fiscal year to have (1) the eligibility of such local educational agency, and (2) the amount which such agency shall be entitled to receive, determined under this section only with respect to such of the former school districts as the agency shall designate in such election.[273]

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[270] Implicit in this language, of course, is the notion that "burden" can be measured.

[271] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 8-9 (1950).

[272] Id. 9.

[273] Act of September 30, 1950, Pub. L. No. 874, 81st Cong., 2d Sess., §2(c) 20 U.S.C.A. §237 (1974 & Supp. 1978) (original version at ch. 1124, 64 Stat. 1102 (1950)).

The Congress was pursuing two policies in enacting section 2(c): (1) to provide equity to local educational agencies that had consolidated since 1938 from one or more former school districts which, but for consolidation, would "have been entitled to assistance under section 2(a); and, (2) in the opinion of the Department, to promote consolidation of school districts.[274] However, the legislative history, which appears to contradict the latter contention, is as follows:

> The eligibility test in section 2, if applied to an entire school district which has been formed since 1938 by consolidation of two or more school districts, would operate in some instances to render the district ineligible for any Federal payments even though, had the consolidation not taken place, one or more of the consolidated districts considered alone would operate inequitably as respects school-district reorganizations which took place in the past, but it also might tend to discourage desirable school-district consolidations which might be contemplated for the future. In harmony with the *committee's desire that Federal payments under this bill insofar as possible not influence matters of internal school policy such as school-district reorganization*, special provision has been made in subsection (c) of section 2 under which, in the case of any such consolidation, the school agency concerned may elect to have its eligibility and amount of payment determined with respect to whichever of the former school districts it selects, instead on the basis of the consolidated school district as a whole. [emphasis added][275]

The major amendments to section 2 of Public Law 874 occurred in 1953, 1958, and 1968. Each of these amendments defined what payments, Federal or otherwise, may or may not be deducted from the amount of compensation a local educational agency receives under section 2.

The Administration of Section 2. Any local educational agency seeking compensation under section 2 is required to submit to the Department data which is used to determine whether the local educational agency qualifies under section 2 and, if so, the amount of compensation to which the local educational agency is entitled. The qualifications that a local educational agency must meet are outlined in the statute. First, real property in the school district of the local educational agency must have been acquired by the Federal Government since 1938, and the property could not have been acquired through an exchange of property already held by the Federal Government before 1938. Second, the acquired property must have had an assessed valuation which was equal to at least ten percent of the assessed valuation of all real property in the school district at the time of acquisition. This information is submitted by the tax assessor for the school district on a standard form. If the local educational agency is a first-time applicant under section 2, its qualifying information is evaluated.

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[274] *Opinion of the Office of the General Counsel*, *supra* note 267, at 3.

[275] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 10 (1950).

A local educational agency qualifies for section 2 payments if it meets these two requirements. Once it does so, the amount of entitlement is determined by multiplying the assessed valuation of the section 2 property by the current tax rate in the school district. Data furnished by the local educational agency regarding the assessed valuation of the Federal property should correspond to determinations made by the Department. In addition to the assessed valuation data, a local educational agency must submit a narrative relating any special circumstances of the Federal holding, budgetary restrictions, and property valuation that may warrant special consideration. The narrative may assist in settling any discrepancies between the information provided by a local educational agency and that compiled by the Department.

Section 2 payments are provided to a local educational agency as budget-balancing funds. Therefore, a local educational agency can only receive the amount of its section 2 entitlement needed to meet current expenditures. After a local educational agency has received funds from all other sources, including those under other sections of Public Law 874, the local educational agency will receive the portion of its section 2 entitlement that meets its budgetary deficiency. If there is no deficiency, the local educational agency recieves no section 2 funds; in any case, payment is limited to the amount of entitlement.

In determining the amount of payment, the Department allows a local educational agency a ten percent margin over its actual level of current expenditures. This margin allows for any miscalculations or increased costs due to unforseen circumstances. On the entitlement computation form, the local educational agency is asked to provide its total current expenditures; the ten percent is added to that amount. The local educational agency then lists available funds: the opening cash balance for the current year, State funds, section 3 payments made before June 30 of the current fiscal year, and payments received with respect to Federal property, including Johnson-O'Malley Funds.

Then the local educational agency must state the total funds needed from property tax to meet current expenditures. This amount translates into the total current expenditures (plus ten percent) minus all funds available to the local educational agency from other sources. Next, the local educational agency gives the assessed valuation of the property in the school district in the current year and the assessed valuation of Federal property in the local educational agency. Then the tax rate required to balance the budget is figured, and the total funds needed from property taxes is divided by the total assessed valuation of all property in the school district.

The Department assumes that a local educational agency is due an entitlement if the foregoing eligiblity requirements are met. To receive funds, a local educational agency must submit its assessed valuation of the property acquired and an open-ended narrative substantiating burden to the local educational agency. No guideline is provided in either the program regulations or the application on how the local educational agency's maximum entitlement is to be determined. Actually, this maximum is simply the property tax rate multiplied by the value of the property.[276]

The problem with the Department's method of administration is that it is a mechanical determination: eligibility for payment is established if the assessed valuation of the land acquired since 1938 at the time of acquisition amounts to ten percent of the assessed valuation of the total district of the local educational agency. This satisfies only two criteria set out in section 2. The Act provides three additional criteria that a local educational agency must meet and which determine maximum entitlement:

- the financial burden must be substantial;
- the financial burden must be continuing; and
- the revenue that would have been derived must affect the amount available to the local educational agency for current expenditures.

Since the funding criteria in the law itself is not precisely defined, section 2 could provide windfall (or a shortfall) in payments to some applicants inasmuch as actual burden is not measured and result in inconsistent program administration across the nation.

Changes in finance patterns in some States and the mechanical method of administration used by the Department require a complete reexamination of section 2 in light of conditions which have changed in the past thirty years. As is the case in any general formula, exceptions must be made for special circumstances, yet even those exceptions become obsolete or so encrusted by past practice that they do not serve their intended purposes. Section 2 is an acknowledgement that the Federal Government has an obligation to nonfederally-connected children when a Federal activity is such a burden on a local educational agency as to threaten the adequacy of their education.

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[276] See Memorandum to Richard Smith, Executive Director of the Commission, from Bill Rock, consultant to the Division of School Assistance in Federally-Affected Areas, regarding "What criteria, if any, should be used to determine the maximum entitlement for which a Section 2 applicant is eligible?" 6 (Jan. 16, 1980).

A need for a continuation of an exception to the general rule has been demonstrated. However, as should be the case with all discretionary exceptions or formula exceptions, great care should be taken in its use to insure that the reason for its existence is a primary concern in its administration.

It is for this reason the Commission believes that an exception for those local educational agencies having school districts in which Federal property constitutes such a high percentage of their geographical area should be continued. That it seriously impairs their ability to provide an adequate level of education should first be considered under the regular formula to determine whether that formula is adequate. Then, if it does not, each of them should be eligible for an exception to the formula which the individual circumstances of the local educational agency would be considered in determining an entitlement.

Since no two situations are identical, criteria set out in the law for the administration must be flexible enough to meet all situations. Arbitrary numbers and absolute dates should be kept to a minimum and subject to some variation in order to carry out the spirit of the exception.

Local Educational Agencies Having A High Percentage of Federally-Connected Children in Attendance At Their Schools. Only a very narrow, imperfect provision is made for local educational agencies having high percentages of federally-connected children in attendance at their schools. Sections 3(d)(1)(A) and 3(d)(2)(B) of Public Law 874 give special consideration to local educational agencies having enrollments of 20 percent "A" children and those having enrollments of 50 percent federally-connected children, respectively. Section 3(d)(2)(B) does operate to increase the entitlements of eligible local educational agencies. However, its purpose has been defeated, in both cases, by the reduction provisions in the payment section (section 5(c)) which prevent those agencys' getting their full entitlement. This problem is avoided in the case of section 2 because section 5(c) guarantees full payment of section 2 entitlements.

The problems in funding entitlements for local educational agencies with heavy concentrations of federally-connected children has not been addressed, heretofor, as a problem as discrete as, and involving more children than, that which section 2 was designed to solve.

For this reason, the Commission believes that the concept behind section 3(d)(2)(B) of existing law (which is an exception from the regular formula) should be updated and expanded to include the so-called "Super-A" local educational agency and given treatment much like that recommended for the section 2 exception to the formula.

Federally-Operated Schools

Section 6 schools--those operated directly by the Federal Government when no local educational agency is able to provide a free public education to children residing on Federal land--have been controversial for many years. Representing a break with the tradition of local control of education, section 6 schools operate in special circumstances where children connected with the Federal Government would not, theoretically, receive a free public education if the Federal Government did not provide it. The original purpose of section 6, as expressed in the statute, was to provide an education for federally-connected children:

(1) if no tax revenues of the State or any political subdivision thereof may be expended for the free public education of such children; or

(2) if it is the judgment of the Commissioner, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children.

Legislative history of the original section 6 noted that Federal operation of public schools has the potential to allow States and local educational agencies "to disclaim responsibility for the education of certain children, and thus to shift the responsibility and cost of their education to the Federal Government." To avoid this, the Congress encouraged that --

> instead of shifting responsibilities for education to the Federal Government, the State and local educational agencies with the payments provided under [Public Law 874] will find ways to extend their systems so as to provide for the education of Federal children now excluded.[277]

Current Section 6 Schools. There are 23 section 6 schools in operation today. Eleven of them were acquired in 1952 from various Federal agencies which had established them before the enactment of Public Law 874. Those 11 are located in:

Fort Benning, Georgia
Fort Knox, Kentucky
Fort Campbell, Kentucky
West Point, New York
Governor's Island Coast Guard Station, New York
Fort Bragg, North Carolina
Crater Lake National Park, Oregon
Antilles School System, Puerto Rico
  (Fort Buchanan, Roosevelt Roads, Fort Allen, Coast Guard Station)
Quantico, Virginia
Dahlgren Naval Weapons Center, Virginia

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[277] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 23 (1950).

The other 12 section 6 schools are located in:

Fort McClellan, Alabama
Fort Rucker, Alabama
Maxwell AFB, Alabama
Dover AFB, Delaware
Fort Stewart, Georgia
Robins AFB, Georgia
England AFB, Louisiana
Hanscom AFB, Massachusetts
Beaufort Marine Air Station, South Carolina
Fort Jackson, South Carolina
Myrtle Beach AFB, South Carolina

In fiscal year 1980 these schools served 32,155 children at an average per-pupil cost of $2,184.

Of the 23 current section 6 projects, 18 are operated by the military on military bases. While all serve elementary students, five also serve secondary students. Secondary students who reside on the 13 military bases that do not operate high schools are educated by the nearest public high schools of local educational agencies assisted under section 3 of Public Law 874 and by State and local resources. In these cases, the elementary project usually includes the cost of transporting the high school students from the base to the public high school.

Four projects are operated by agreement with local school districts. Two serve children residing on the Hanscom Air Force Base in Massachusetts. The children who reside on the Dover Air Force Base in Delaware are educated by the Caesar Rodney School District in which the base is located. The full cost of their schooling is provided by section 6. Children residing in the Crater National Park in Arizona are educated by the Klamath Falls Schools District. These three projects are fully funded under section 6.

Section 6 payments do not fully fund the elementary school at the Coast Guard Base on Governor's Island, New York. The New York City Public School System, which operates the school, pays the balance of the cost, assisted with section 3 funds. The high school students residing on the Island are transported to public high schools in New York City; assistance is also provided for them under section 3.

Nineteen of the projects funded in fiscal year 1980 were operated by the military. Only six projects were necessary because current State laws prohibit or limit the ability of local educational agencies to operate schools located on Federal property. The projects in Alabama, Georgia, Louisiana, and South Carolina were established because the Secretary of Health, Education, and Welfare determined, in 1962, that no local educational agency was able to provide suitable free public education for the on-base children because of the segregation issue at the time.

A variety of State actions have forbidden the expenditure of funds for the education of children residing on Federal property or have prevented a local educational agency from operating an on-base school. In Kentucky, State law prohibits the expenditure of funds for the education of children residing on Federal property. State Attorneys General opinions rendered in Kentucky, Georgia, and North Carolina have ruled that those States cannot spend State or local funds for children who live on Federal property. The original piece of land ceded by the State of New York to the Federal Government to become West Point is not considered part of the State of New York. Thus, under State law, children residing there need not be provided a free public education. Under Oregon law, no school district is required to provide free public education to children residing in the National Park at Crater Lake. A Delaware State law prohibits the expenditure of State and local funds for the education of children residing on tax-exempt Federal property.

Elementary schoolchildren residing on Hanscom Field in Massachusetts are educated in a section 6 school because the Lincoln School District refuses to accept financial responsibility for their education, an action specifically allowed under Massachusetts law. While elementary students attend a section 6 school operated by the Lincoln School District, high school children residing on Hanscom Field are educated by the Bedford School District, which is willing to pay for their education using local resources, payments under section 3 of Public Law 874, and State aid.

Transfer of Section 6 Schools. It has been suggested that the operation of section 6 schools might be transferred to the State in which that school is located. Such a transfer, some have argued, would violate the longstanding principle that the Federal Government cannot dictate to States how the States handle public education. It has been said that such a policy, if adopted by the Impact Aid Commission, would violate the Commission's own policy of promoting Federal neutrality under State and local laws.

Some have asserted that section 6 schools should be transferred to the local educational agency nearest the section 6 school. Twenty-two of the 23 section 6 schools have a local educational agency nearby which could, conceivably, take over operation of the federally-operated school.[278]

Many oppose such a transfer. Pointing out that transferring section 6 schools to local educational agencies puts still another burden on schools plagued with budgetary problems, supporters of section 6 schools argue that some local educational agencies near section 6 schools are of insufficient quality to satisfy the needs of the federally-connected student.

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[278] SAFA Director William Stormer stated in the July 17 meeting in Chicago, Illinois that "With the exception of the Puerto Rican arrangement, there are local educational agencies adjacent to [each section 6 school] that vary in quality from high to low." *Transcript* of Meeting of the Commission on the Review of the Federal Impact Aid Program, Chicago, Illinois 206 (July 17, 1980).

In fact, there is a presumption written into the law, added by amendment in 1955, that no local educational agency near an Army, Navy, Marine, or Air Force installation is capable of providing a suitable public education for children residing there until the Commissioner and the Secretary of the Military Department concerned determine jointly, after consulting with the appropriate State education agency, that a local educational agency can provide a suitable free education for those children.

According to section 6 legislative history, the purpose of this provision was:

> to insure that schools provided under this section shall not be closed without thorough and careful consideration of all factors affecting the children concerned.[279]

The needs of children who attend section 6 schools are paramount in the minds of those who support maintaining section 6 schools as they are today. Section 6 schools "belong to the parents and the children they serve," it is said. Those military parents deserve to be confident that wherever they go, there will be a suitable school for their children. Transferring section 6 schools to States or local educational agencies will undermine that confidence, placing the education of military dependents at a low priority at the same time that evidence shows the military is increasingly needful of special services and treatment.

It is not clear that the needs of children currently served by section 6 schools could be met if local educational agencies, which would become heavily impacted districts by doing so, were to take over operation of section 6 schools. Those agencies would then have to rely on section 3 Impact Aid funds for their successful operation, without benefiting from the full funding guaranteed to section 6 schools.

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[279] S. Rep. No. 871, 84th Cong., 1st Sess. 1-2 (1955). This amendment was at least in part a response to a decision by the Commissioner of Education to close the section 6 high school on the Marine Corps base at Quantico, Virginia. Concerned that the Commissioner's decision was based on "a narrow interpretation of the present law," the Congress required decisions to close a school be made jointly by the Commissioner of Education and the Secretary of the military department concerned in order to --

> insure that those most vitally concerned with a school closing will be afforded proper representation and consideration before the decision is made to close their schools, and...avoid any possibility of arbitrary and unilateral action by the Commissioner of Education.... (S. Rep. No. 871, 84th Cong., 1st Sess. 3 (1955).)

What is the validity of these arguments, given the original purposes for which section 6 was enacted, the facts under which section 6 operated in 1950, changes in section 6 since 1950, and the facts as they are today? What follows is an analysis of the policy which a commitment to Federal neutrality may require and a look at a rationale for section 6 schools which some say is outmoded today.

a) Federal Neutrality in Education

Introduction. It is a longstanding general rule that the Federal Government shall not interfere with local operation of public schools. This principle is embodied in the general provisions title of the Impact Aid statute, by amendment in 1978. Section 432 of that title reads:

> No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the selection of library resources, textbooks, or printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.[280]

Impact Aid and Neutrality. Thus general provisions of the Impact Aid statute ensure Federal neutrality in education. Furthermore, section 6 itself was amended in 1953 by Public Law 83-248 to provide that in administering section 6, the Commissioner shall not exercise any discretion, supervision, or control over personnel, curriculum, or instructional programs. Legislative history reveals that the amendment was designed to:

> render it impossible for the Office of Education to take any steps in the direction of actual school operation or control over school curriculum or programs of instruction. ... The amendment precludes the Commissioner from controlling the personnel, curriculum, or program of instruction of any [section 6 school,] instead making the local educational agency or other Federal agency providing the education responsible for such matters and for seeing to it that the education provided is comparable to that provided in comparable communities....[281]

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[280] Act of September 30, 1959, Pub. L. No. 874, 81st Cong., 2d Sess., §432, as amended (original version at ch. 1124, 64 Stat. 1107 (1950)).

[281] H.R. Rep. No. 708, 83rd Cong., 1st Sess. 7 (1953).

Finally, the Impact Aid Commission has confirmed its commitment to Federal neutrality under State and local laws in its Interim Report, and Policy Findings Upon Which Recommendations Can Be Developed.[282]

Neutrality and Section 6. It is agreed that the Federal Government should be neutral and not dictate education policies to State and local governments. Does neutrality require, then, that the Federal Government continue to operate section 6 schools? Or does neutrality require that the Federal Government transfer operation of section 6 schools to State and local educational agencies?

It has already been noted that section 6 was enacted originally to authorize the Federal Government to operate public schools for children residing on Federal land (1) when no State tax revenues could be spent for their free public education or (2) when in the judgment of the Commissioner, no local educational agency could provide suitable free public education for them. The original law stipulated that the federally-provided education was to be comparable to the public education provided in comparable communities in the State.[283]

Historically and analytically, section 6 schools are appropriate when State law expressly prohibits the State or a local educational agency from providing a free public education for children residing on Federal property or when the nature of the Federal jurisdiction over federally-owned land--usually exclusive jurisdiction--means that property is not legally part of the State in which it is physically located. Property under the exclusive jurisdiction of the Federal Government is, of course, tax-exempt. In addition, children residing on that property are not legal residents of the State and, under most State laws, do not benefit from a compulsory education law. Under this analysis, it seems Federal neutrality requires direct Federal operation of schools for federally-connected children which the State refuses to educate. Otherwise, it might be argued that the Federal Government interferes with State sovereignty either by (1) requiring the State to educate children its laws allow it to refuse to educate or (2) by dictating that a school be operated where there is insufficient taxable property to support it.

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[282] *Interim Report of the Commission on the Review of the Federal Impact Aid Program* 5 (April 22, 1980); *Policy Findings Upon Which Recommendations Can Be Developed* 12 (July 17, 1980).

[283] Section 6 was amended in 1953 by Public Law 83-248 to provide that when the Federal Government provides public education for federally-connected students outside the continental United States, that education is to be comparable with public education provided in the schools of the District of Columbia. That amendment to Public Law 874 also provided that personnel for section 6 schools may be hired without regard for civil service laws and broadened the Commissioner's authority to establish section 6 schools to allow the Commissioner to provide for the education of children of Federal employees residing on property adjacent to Federal land. There was a special concern in 1953 with children residing in Puerto Rico, where the language of instruction in local schools is not English.

It is uncertain whether section 6 schools could be transferred to States in a manner which preserves State sovereignty and ensures Federal neutrality. Possibly, the transfer could be made pursuant to an agreement to which the State gives its full, informed consent. Also, when there is no taxable property for support of locally-run or State-operated schools, Federal compensation could be guaranteed pursuant to agreement between a State and the Federal Government independent of annual appropriations.

Evidence before the Commission does not support the conclusion that these requirements can be met. Thus the Commission asserts that Federal neutrality does not require transfer of section 6 schools to the States or localities. Further, Federal neutrality does require some guarantees which it is not clear can be met.

Problems with Section 6 Schools. Some have argued there are problems with Federal operation of section 6 schools which would raise the presumption that those schools should be transferred to States or localities. For example, it has been argued that the very provision prohibiting Federal interference with local education matters hamstrings the Education Department in its attempts to live up to other, equally binding provisions of the law: that the Commissioner ensure efficient expenditures and the provision of a comparable education.

Quality of Education, Efficient Expenditures. The 1978 Education Amendments added this provision to Public Law 874:

> ...The Commissioner shall ensure that funds provided under [section 6] are expended in an efficient manner, and shall require an accounting of funds by such agency at least on an annual basis. The Commissioner shall further be provided with data relating to the quality and type of education provided to such children under [section 6].[284]

Legislative history of this addition to the statute reveals congressional interest in "bring[ing] about more accountability for the funding and operation of [section 6] schools."[285]

Some have argued that the Department cannot exert sufficient oversight over section 6 schools to satisfy legislative requirements that the Commissioner ensure efficient expenditures and the provision of a comparable education. The Commission disagrees with these criticisms. The Department does not collect data that relates directly to the quality of education or visit schools to determine the quality and type of educational program offered. The Education Department does, however, require that section 6 schools keep pupil-accounting records of attendance, membership, and residence similar to those prescribed by the State of location, or by the District of Columbia, whichever is applicable. At the end of each quarter of the fiscal year, the operating agency is also required to submit a report to the Commissioner on membership, average daily attendance, and expenditures. The fourth report becomes the final report for the fiscal year. This final report, together with a field survey report, is the basis upon which payment is made. The Department further requires that section 6 schools adjust approved budgets in the event of decrease or increase in average daily attendance. If, as the result of new or changed conditions, it is evident that average daily attendance will increase above an estimated figure, the budget can be increased by the Commissioner pursuant to a request from the operating Federal agency.

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[284] Act of September 30, 1950, Pub. L. No. 874, 81st Cong., 2d Sess., §6(d), 20 U.S.C.A. §241(d) (Supp. 1978).

[285] H.R. Rep. No. 95-1137, 95th Cong., 2d Sess. 108 (1978).

The Letter of Proposal submitted by a Federal agency to establish a section 6 school assures the Commissioner that the requested per-pupil cost will provide free public education comparable to that provided for children in comparable communities in the State. The operating Federal agency submits data from five comparable local educational agencies, including information on teachers' salaries and per-pupil expenditures for various budget items. This data can be used only to assess the quality of a section 6 school's program.

Thus considerable data is available to the Education Department from section 6 schools regarding expenditures, enrollments, and related matters. An excessively high per-pupil cost in a section 6 school would catch the attention of the Education Department. This goes far in enabling the Education Department to ensure efficient expenditures.

The Education Department is prevented under section 6 from "tak[ing] any steps in the direction of actual school operation or control over school curriculum or programs of instruction." It has been said this prevents the Education Department from ensuring the delivery of a comparable education in section 6 schools.

The Education Department is prevented in every case from interfering with local control of school programs. Criticizing section 6 schools because the Education Department cannot control them directly measures section 6 schools by a different standard than other schools. That measurement is not warranted. In the same way that the Education Department relies on the good faith of administrators of schools receiving sections 2, 3, and 4 money, it should rely on the good faith of commanders operating section 6 schools. The Commission concludes that criticisms of section 6 schools on the grounds that it is impossible for the Education Department to ensure efficient expenditures and the provision of a comparable education are not warranted. Thus, those criticisms do not support the assertion that section 6 schools should be transferred to State and local educational agencies.

Elective School Boards. There has been a recent improvement in the administration of section 6 schools. Until 1978, there was nothing in the Impact Aid law allowing or requiring that section 6 schools be governed by an elected school board. Over the years, "school committees" have advised base commanders in charge of section 6 schools. Those committees could advise only; nothing they decided could be binding.

It is not necessarily so that a military officer can represent the interests of military parents; it is less likely that a military officer can represent the interests of civilian parents. The unique situation in the section 6 schools on Puerto Rico--the Antilles Consolidated School System--brought this problem into prominence in 1978. That school system is run by the Navy in buildings loaned by the Army. The chief administrative officer of the school system in 1978 was an admiral, who "act[ed] as the entire school board."[286/] Half of the enrollment, however, came from civilian families. At one school, two-thirds of the enrollment was non-military.

This organizational structure, according to parents registering their concern with it, "led to several unsound decisions to reduce program offerings and ancillary services, decisions which have adversely affected the quality of education and in which parents have had no input."[287/]

In response to these concerns, the Congress, in 1978, amended section 6 to require:

> The Commissioner shall ensure the establishment of an elective school board in schools assisted under this section. Such school board shall be composed of a minimum of three members, elected by the parents of students in attendance at such school. The Commissioner shall, by regulation, establish procedures for carrying out such school board elections as provided in this subsection.
>
> A school board established under this [subsection] shall be empowered to oversee school expenditures and operations, subject to audit procedures established by the Commissioner, and other provisions of this section.[288/]

286/ H.R. Rep. No. 1137, 95th Cong., 2d Sess. 107 (1978).

287/ Id.

288/ Act of September 30, 1950, Pub. L. No. 874, 81st Cong., 2d Sess., §§6(g) to 6(h), 20 U.S.C.A. §§241(g) to 241(h) (Supp. 1978).

This provision is an attempt to guarantee parent participation in decision-making in section 6 schools. The influence of a section 6 board can never resemble that of a standard school board. A section 6 school board does not arguably have a constituency, it does not answer to a taxpaying electorate, and base commanders in charge of section 6 schools are personally liable for the proper expenditure of section 6 funds, which they receive directly. The 1978 amendment, however, is at least an improvement over the previously existing situation. In fact, it can be argued, dissatisfaction in one school system--the Puerto Rican school system--prompted the amendment. Presumably parents at other section 6 schools are not dissatisfied with the administration of their schools. That being the case, the concern that section 6 school boards cannot truly resemble standard schools boards is a minor one.

The conclusion is warranted that Federal neutrality does not require the transfer of section 6 schools to local educational agencies. Problems with overseeing section 6 schools and guaranteeing parent input do not suggest it is necessary for local educational agencies to undertake the operation of section 6 schools. It is unlikely--if not impossible--that an orderly, gradual transfer and continued funding can be assured so that the educational needs of section 6 schoolchildren can be met.

b) Desegregation

Originally, section 6 schools were established when State law prevented the provision of a suitable free public education for children residing on Federal land. Section 6 was amended in 1960 to allow establishment of a section 6 school to provide education for children of members of the Armed Forces on active duty:

> ...if the schools in which free public education is usually provided for such children are made unavailable to them as a result of official action by State or local governmental authority and it is the judgment of the Commissioner, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children....[289]

This amendment was passed, along with several bills concerning civil rights introduced to the House Committee on the Judiciary in 1960, "to provide more effective means to enforce the civil rights of persons within the jurisdiction of the United States."[290] The specific amendment to section 6 was designed to enable:

289/ Act of September 30, 1950, Pub. L. No. 874, 81st Cong., 2d Sess., §6(a)(2), 20 U.S.C.A. §241(a)(2) (1974 & Supp. 1978).

290/ H.R. Rep. No. 956, 86th Cong., 1st Sess. 1 (1960).

> the Federal Government to provide for the education of all children of members of our Armed Forces, whether they are or are not residents on Federal property, when public schools have been closed because of desegregation decisions or orders.[291]

Over half of the section 6 projects funded in fiscal 1980 are in States which formerly operated dual school systems. Some of these projects were funded initially to ensure that children of parents in the Armed Services were able to attend unitary schools.

While it is no longer possible for local educational agencies to operate segregated schools, desegregation litigation continues today. Federal desegregation orders still mandate school closures. Thus the existence of section 6 schools to ensure military children are able to attend integrated schools is not, despite desegregation efforts, entirely without foundation today.

This study has outlined the arguments in support of keeping section 6 schools as they are today. Those arguments center around the position that Federal neutrality in State and local education matters requires Federal operation of section 6 schools. Supporters of section 6 schools also point out that the military have special concerns and deserve assurances that their children will be educated adequately, wherever they are transferred.

The Commission concludes that Federal neutrality does not require the transfer of section 6 schools to State or local educational agencies. Furthermore, criticisms of the operation of section 6 schools--including Federal oversight in ensuring efficient expenditures and the provision of a comparable education in section 6 schools--do not outweigh the fundamental interest in ensuring that the educational needs of section 6 schoolchildren are met.

For these reasons, the Commission does not recommend transfer of section 6 schools to State or local educational agencies.

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[291] *Id.*

V. SHOULD LOCAL EDUCATIONAL AGENCIES EDUCATING CHILDREN IN ATTENDANCE AT PUBLIC SCHOOLS BY REASON OF FEDERAL LAW OR ACTIVITIES BE COMPENSATED THEREFOR?

The Commission is charged with reviewing and evaluating the administration and operation of the Impact Aid Program. As part of that review and evaluation, the Commission specifically has considered the equity of the present funding structure--how the Federal Government burdens localities and whether compensation under Impact Aid for that burden is adequate and fairly distributed.

During the course of its hearings, the Commission heard testimony regarding the following issues:

- whether local educational agencies are compensated for the increased costs caused by sudden and substantial enrollments resulting from Federal activities;

- whether the present provisions for including children of Cuban refugees should be expanded to include other refugees and children of undocumented aliens; and

- whether local educational agencies should be compensated for the costs they incur in complying with Federal laws and regulations regarding equality of educational opportunity.

The Federal Government imposes burdens on school districts by owning tax-exempt land and by increasing enrollments with children of families who live or work on Federal land. These are the traditional Impact Aid "revenue" and "service" burdens. There are other burdens carried by local educational agencies because of Federal mandates or Federal activities not covered by present law. The existence of these additional impacts, which are traceable to Federal policies or activities, raises the issue that Impact Aid should be expanded to compensate for the burden those policies and activities impose.

Section 4 of Public Law 874 currently provides for payments to local educational agencies experiencing sudden and substantial increases in enrollment caused by increased Federal activities. If additional impacts associated with the education of refugee children and undocumented aliens and the costs associated with compliance with Federal laws and regulations were to be included as Federal activities warranting compensation under the Impact Aid Program, section 4 is the appropriate place in the law to provide for such assistance.

Under current law, section 4 of Public Law 874 authorizes payments to local educational agencies which experience an increase in enrollment amounting to five percent of the previous year's enrollment as a result of Federal activities, if that agency is determined to be making a reasonable tax effort and if the Federal activities place a substantial and continuing financial burden on that agency.[292]

The amount of payment to which the agency is entitled during the year of the increase is to be based on the number of children determined to have caused the increase and the cost per child necessary to provide free public education for those children. During the year following the increase, an eligible agency is entitled to receive 50 percent of its first year's entitlement, minus the amount that agency is eligible to receive for those children under section 3.

Section 4 also contains provisions for adjustments for decreases in Federal activities.

Fiscal year 1974 was the last year in which there was an application approved under section 4. For several years previous to fiscal year 1974, only small numbers of applications were approved under section 4.

Since 1975, section 4 has been funded under Tier III in section 5(c) so that no funds have been available for section 4.

Section 4 does not require that the children included in determining an increase resulting from Federal activities reside on Federal property, reside with parents working on Federal property, or be dependents of Federal employees. They may be children of persons working for a contractor of the Federal Government. Section 4 was enacted because the Congress recognized a "clear Federal responsibility to assist school districts in meeting financial problems which have their origin in the impact of Federal activities on a local community" regardless of whether those activities are associated with Federal property or Federal employees.

Section 4 may be considered a nullity today because it has not been used for several years. It does, however, reflect an important policy with regard to situations which may be considered the logical counterpart of those covered by section 2. Whereas, section 2 provides for compensation when mere acquisition of real property by the Federal Government--regardless of schoolchildren associated with that property--imposes a burden, section 4 provides for compensation when the mere presence of a child in school as the result of Federal activities--regardless of property ownership--constitutes a burden.

Section 4 was originally enacted to cope with rapidly growing school enrollments, a problem in the 1950's and 1960's. Enrollments are now declining; therefore, increases resulting from Federal activities, if they occur, are submerged in a general decline. The Commission has heard testimony regarding rapid increases in enrollment in local educational agencies affected by industrial uses of Federal property in the West to obtain energy resources.[293] Even though these cases are not widespread, they alone would be sufficient reason for considering reactivating the operation of section 4.

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[292] 20 U.S.C.A. §239 (1974 & Supp. 1978).

Also important is evidence that Federal laws and polices are imposing substantial and continuing burdens on local educational agencies for which compensation is not available. Some compensation might be available if section 4 were reactivated and modernized, consistent with the original policy underlying section 4, to meet needs associated with problems of the 1980's--specifically, the presence of large numbers of refugee children and children of undocumented aliens in public schools.

Refugee Children

The Impact Aid law provides that children of parents meeting the definition of a refugee in the Migration and Refugee Assistance Act of 1962 are considered federally-connected children for purposes of qualifying for Impact Aid. Section 2(b)(3) of that 1962 act limits coverage for assistance to "aliens who...because of persecution or fear of persecution on account of race, religion, or political opinion, fled from a nation or area of the Western Hemisphere." In practice, aliens under the 1962 act meant Cuban refugees only. Local educational agencies are eligible for Impact Aid, under section 3(b), by reason of having children of refugees enrolled. A stringent eligibility requirement, however, limits Impact Aid to school districts whose enrollment is at least 20 percent Cuban refugees.

There may be some statutory authority for broadening the coverage beyond Cuban refugee children under the Impact Aid law. First, the term "refugee" as defined in section 3 of the 1975 Indochinese Migration and Refugee Assistance Act provides that:

> The term 'refugee' as defined in section 2(b)(3) of the Migration and Refugee Act of 1962...shall be deemed to include aliens who...because of persecution or fear of persecution on account of race, religion, or political opinion, fled from Cambodia, Vietnam, or Laos....

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[293] During the Commission hearings witnesses testified that the energy development industry often locates in western areas (i.e., Utah, Wyoming, Colorado) with extensive Federal ownership. Usually those areas have a small school system with a tax base capable of supporting only a small system. Employment generated by the industry can create havoc for a small system, bringing large numbers of families with school-age children to the area. Economic benefits of the energy industry are limited because the industry brings many of its employees with it to the area. Local employees working in support positions on the installation are often paid below market wages because the facility attracts an influx of job seekers.

Thus the 1962 Act referred to in Public Law 874 was amended in effect by the 1975 law so that the definition of a refugee includes those fleeing Vietnam, Cambodia, and Laos.

Secondly, section 2(a) of the Indochinese Act of 1975 provides money authorized under that act be available for the "functions set forth in the Migration and Refugee Assistance Act of 1962." Section 2(b) of the 1975 act reads that:

> None of the funds authorized to be appropriated by this Act shall be available for the performance of functions...other than carrying out provisions of the Migration and Refugee Assistance Act of 1962..."

compensate local educational agencies for the presence of Indochinese refugee children enrolled.

In support of expanding the Impact Aid Program to Indochinese refugees, one witness at the Seattle, Washington hearing testified that:

> Impact Aid has been expanded once to include Cuban refugees, one criteria being that they had to constitute 20 percent of a school district's population. It also seems appropriate that Southeast Asian refugees be included.
>
> It is national policy which gets or brings them or allows them to come to the United States. As this Commission noted in its Plan of Study, "Impact Aid, theoretically compensation for Federal activities burdening localities, seems an appropriate vehicle for assisting school districts educating refugee children."
>
> It is difficult for the local school districts in Washington and Oregon to cope with this [influx of Indochinese refugees] situation much longer without more assistance from the Federal Government.
>
> As a philosophical point, inasmuch as these children are here because of the Government, the Government should use whatever funds that have been available in the past for similar situations and apply them now.[294]

It is arguable that the 20 percent eligibility requirement--a stringent and not entirely reasonable one--should be discontinued. As it is, before the recent influx of Cubans to Miami, only two school districts--Union City and West New York, New Jersey--met this requirement.

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[294] Transcript of Hearing before the Commission on the Review of the Federal Impact Aid Program, Seattle, Washington 148-155 (Mar. 7, 1980).

Responding to the 20 percent eligibility requirement, a representative from World Concern, a Christian relief and development agency holding contracts with the United States Government and responsible for the resettlement of Southeast Asian refugees, commented, at the Seattle, Washington hearing, that:

> There has been sufficient background of Indochinese refugees as far as to the inclusion of Indochinese refugees under the definitions of federally-connected. World Concern would be against any provision regarding an arbitrary percentage that the refugees constitute of a school district's population. For one thing, such a factor does not reflect that the amount of money needed to educate a child with a multiplicity of problems--such as a refugee--can be and is greater than the normal student.[295]

Additionally, Frank Loy, Head of the Department of State's Office of Refugee Programs, testified in Washington, D.C., that if Impact Aid were to cover refugees, the 20 percent requirement is high and consideration should be given to a sensible cut-off point.[296]

Section 4, which provides for compensation to local educational agencies experiencing sudden and substantial increases in enrollments because of increased Federal activities in an area, can fairly be read to authorize compensation to local educational agencies faced suddenly with large numbers of refugee children. Legislative history of section 4 provides:

> there is a clear Federal responsibility to assist school districts in meeting financial problems which have their origin in the impact of Federal activities on a local community.[297]

Giving asylum to refugees, it can be argued, is a Federal "activity." Mr. Loy spoke to this point at the final Washington, D.C., hearing:

> ...In large part, the Federal Government must pick up an important part of the tab for certain services that these refugees are going to get in the first years, because it is too big a burden on the local community and _it is in a sense, in essence, a Federal problem_. [emphasis added][298]

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[295] *Id.* 155.

[296] *Transcript* of Hearing before the Commission on the Review of the Federal Impact Aid Program, Washington, D.C. 152 (May 29, 1980).

[297] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 16 (1950).

[298] *Transcript* of Hearing Before the Commission on the Review of the Federal Impact Aid Program, Washington, D.C. 141-42 (May 29, 1980).

Looking closer at the legislative history, section 4 is addressed to the cases in which "the establishment or reactivation of a large-scale Federal activity has resulted in a sudden and substantial increase in the school enrollments of nearby local educational agencies." The use of the word "nearby" implies that a physical installation triggers section 4.

But, one of the reasons Federal compensation is required, the House Report says, is that "property values will lag behind" the need for increased revenues from taxes to support the newly-burdened schools. Clearly, refugees bring little or no tax base to a locality.

At the San Francisco, California, hearing, the superintendent representing the Long Beach Unified School District mentioned their present situation with Indochinese refugees and the local property tax:

> One of the basic premises of Impact Aid has been Federal policy that places sizeable numbers of students in a school district without any sizeable increases in local property tax base. The refugee program fits this category.[299]

At the Chicago, Illinois, hearing, a superintendent from St. Paul, Minnesota, said the Indochinese refugees residing in low-rent public housing detract from the local property tax base that usually pays for the education of such children:

> As of the present, St. Paul has received 1,320 additional students from Southeast Asian families, with 650 arriving this school year alone. Most of these children live in low rent housing units. Most of them come without knowledge of English and most of them come with very little prior formal education. Their needs are significant and the school district's responsibility to provide for those needs is certainly apparent.
>
> However, under these circumstances there is a Federal obligation to communities and school districts such as St. Paul affected by the non-taxable status of federally owned properties within their jurisdiction, affected by federally sponsored low rent housing units, and affected by implementation of other Federal policies.[300]

299/ Transcript of Hearing before the Commission on the Review of the Federal Impact Aid Program, San Francisco, California 79 (Apr. 22, 1980).

300/ Transcript of Hearing before the Commission on the Review of the Federal Impact Aid Program, Chicago, Illinois 185 (Mar. 7, 1980).

The House Report continues:

> The resulting financial difficulties which confront such communities are traceable directly to the advent of the Federal activity and it is entirely just that the Federal Government take some reasonable measures to help finance the school systems of the affected communities for a limited period until...[the community can] finance its new obligations out of its new resources.[301]

If section 4 activities are triggered by their being "traceable directly to the advent of the Federal activity" and refugee policy can be considered a Federal activity, then this passage supports the conclusion that the Federal Government ought to "help finance the school systems" affected by Federal refugee policy.

Undocumented Aliens

The arguments for inclusion of refugee children also apply to expanding Impact Aid to compensate for the presence of children of undocumented aliens in public schools. It can be argued that the presence of undocumented aliens in a school is "traceable directly" to a "Federal activity," warranting financial assistance under section 4 of Impact Aid.

Impact Aid traditionally compensates local educational agencies for the cost of educating federally-connected children. It is both supported by the law, and it is reasonable to argue that fairness requires inclusion in the Impact Aid Program of all children enrolled because of Federal activities. The case can be made that the presence of children of undocumented aliens--who, the Commission has learned, flood some schools in Texas and other States on the southern border of the country--is attributable to a Federal activity. That activity is the selective enforcement of the immigration laws of the United States.

The Federal Government has an immigration policy which, while designed to prevent the entry of persons across the southern border, is difficult to enforce and results in the entry of undocumented aliens. While this is not an affirmative Federal policy--as the affirmative decision to allow refugees into the country is--the result in schools is the same: there is an increase in public school enrollments of children for whom there is little, if any, tax base to support their education.

There is further support for the proposition that undocumented children are "federally-connected." The U.S. Justice Department has taken the official position--through an amicus curiae brief--that undocumented alien children have a constitutional right to a free public education as other children have.

The Justice Department took that position in a case currently being litigated in Texas. A discussion of it follows.

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[301] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 16 (1950).

The case In Re: Alien Children Education Litigation came before the United States District Court for the Southern District of Texas as an action consolidated by the Judicial Panel of Multidistrict Litigation[302] of several lawsuits against the State of Texas and State education officials. The class action suit challenged the validity of a Texas statute which prohibited the use of a State fund to educate persons who are not citizens of the United States or "legally admitted aliens."[303] (Tex. Educ. Code Ann., tit. 2, §21.031.)

The plaintiffs in the case were a class of schoolage "undocumented" children, their parents, and the United States.[304] The State of Texas and the Texas Education Agency were named as defendants or were granted the right to intervene as defendants. The Governor of Texas and the Commissioner of Education were later added as defendants pursuant to amendments to the complaint.[305]

In May 1975, the Texas Legislature amended the Texas Education Code to provide in pertinent part:

> (a) All children who are citizens of the United States or legally admitted aliens and who are over the age of five years and under the age of 21 years on the first day of September of any scholastic year shall be entitled to the benefits of any Available School Fund for that year.
>
> (b) Every child in this state who is a citizen of the United States or a legally admitted alien and who is over the age of five years and not over the age of 21 years on the first day of September of the year in which the admission is sought shall be permitted to attend the public free schools of the district in which he resides or in which his parent, guardian, or the person having lawful control of him resides at the time he applies for admission.

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[302] The Panel, on November 16, 1979, issued an Opinion and Order finding that the claims against the State involved common questions of fact and that centralization of these claims in the Southern District Court of Texas for coordinated or consolidated pretrial proceedings would serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.

[303] For clarity, the district court referred to persons who are not citizens and who were not authorized to enter the country as "undocumented."

[304] On January 11, 1980, the United States filed a motion to intervene and a complaint-in-intervention asserting that §21.031 violates the equal protection clause of the Fourteenth Amendment. By order of February 1, 1980, the court granted the motion to intervene.

[305] The district court referred to the defendants collectively as the State.

> (c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over five and not over 21 years of age at the beginning of the scholastic year if such person or his parent, guardian or person having lawful control resides within the school district.

This provision--section 21.031--allows local educational agencies to deny undocumented children admission or to admit only tuition-paying students. In effect, it excludes undocumented children from school. The statute makes a classification which means undocumented children are treated differently by the public schools than all other children are treated.

In July 1980, District Court Judge Woodrow Seal held that section 21.031 violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The court forbade State education officials from denying free public education to any otherwise eligible child because of the child's immigration status.

The district court determined that section 21.031 was subject to strict judicial scrutiny because:

> the statute absolutely deprives undocumented children of access to education thereby causing them great harm; there is a direct and substantial relationship between education and the explicitly guaranteed right to exchange ideas and information; and, the provision of education is not a social or economic policy but a state function.306/

The court distinguished San Antonio Ind. School Dist. v. Rodriguez, 411 U.S. 1, 35 (1973), in which the Supreme Court refused to scrutinize the Texas education financing scheme strictly because "[e]ducation...is not among the rights afforded explicit protection under [illegible] Federal Constitution." Id., at 29.

The Supreme Court ruled in Rodriguez that there is no right to relatively equal expenditures for education. In Re Alien Children, however, presents the case of absolute deprivation of access to the schools by a defined class of children.307/ Thus, the Court raised the question

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306/ In Re Alien Children Litigation, MDL No. 398, at 29 (July 21, 1980) [hereinafter cited as Alien Children].

307/ In Rodriguez, the Supreme Court stated that "no charge fairly could be made that the [State financing] system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process. Id., at 37. Thus there was no absolute deprivation in Rodriguez.

reserved in Rodriguez of whether there is a fundamental right under the Constitution to minimal education. The district court noted the Supreme Court said in Rodriguez:

> that a system which contributes more funds for the education of some children than others, does not infringe upon a fundamental interest, [but] reserved the question whether absolute deprivation of educational opportunity might require strict judicial scrutiny.[308]

Thus, In Re Alien Children, the district court said, "squarely presents the issue reserved by the Supreme Court in Rodriguez: what level of scrutiny absolutely deprives educational opportunities to some children within the state's jurisdiction?"[309]

That level of scrutiny is strict, the district court said. Under such analysis, section 21.031 violates the Equal Protection Clause of the Fourteenth Amendment. No compelling State interest such as local control over education justifies distinguishing between undocumented children and other children so that undocumented children are excluded from public schools.

The court noted that:

> when only access to education is deprived, holding that a fundamental interest is involved does not occasion an unprecedented upheaval which would terminate state control over education. An interest in a government cannot be required to assume or even to determine what constitutes enjoyment of that process or program.[310]

The court also recognized that "the right to access to education when it is being provided to others does not imply a right to equal enjoyment of education."[311]

Acknowledging that States may treat undocumented aliens differently than it treats other residents, the court pointed out that the differing treatment must be "reasonably related to a valid governmental objective and...not affect fundamental rights."[312] Citing Yick Wo v. Hopkins, 118 U.S. 356 (1866), the court said:

> The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: "Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within

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[308] Alien Children, supra note 306, at 16.
[309] Id.
[310] Id. 27.
[311] Id. 29.
[312] Id. 30.

> its jurisdiction the equal protection of laws." These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any difference of race, of color, or of nationality; and the equal protection of laws is a pledge of the protection of equal laws. *Id.*, at 369.

The district court concluded "that the qualifications 'within the jurisdiction' of the state should be given its common, everyday meaning. Accordingly, undocumented children who reside in Texas and are subject to its laws are 'within the jurisdiction' of Texas."[313]

In finding that section 21.031 effectively denied an education to undocumented alien children, the court held that the statute discriminated against undocumented children on the basis of wealth. The court noted that "Equal Protection does not imply the abolition of differences created by wealth. Enabling a person to have access to a necessary service or program neither assures him the same access which others have nor requires that any burden imposed be proportioned to his individual circumstances."[314] However, the court made it clear that the crucial argument in *Alien Children* is "that the lack of personal resources occasioned an absolute deprivation of the desired benefit."[315]

The district court observed that in cases like *Rodriguez*, the States are not required to insure absolute equality. The court distinguished *Rodriguez* and concluded that "a state law which operates to deprive absolutely children of education when they are indigent should be scrutinized."[316]

One issue raised before the district court was whether Title I of the Elementary and Secondary Act of 1965 preempts section 21.031 of the Texas Education Code. State legislation is preempted by Federal law if it encroaches improperly upon an area of Federal responsibility or concern. The court noted that:

> [the] pre-emption doctrine has two elements: state legislation is pre-empted if it regulates matters which are subject to exclusive federal legislative control or if it conflicts with the effectuation of congressional objectives. Under the first formulation, congressional power should be deemed to "oust" state authority when "the nature of the subject matter permits no other conclusion" or "when Congress has unmistakably so ordained. In the second circumstances, when the federal legislation contemplates complementary state legislation, state law will be held invalid if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[citations omitted][317]

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[313] *Id.* 35.

[314] *Id.* 42.

[315] *Id.* 40.

[316] *Id.* 43.

[317] *Id.* 64.

The court found that Title I, which authorizes compensatory programs for "educationally deprived" children, including the children of migrants, does not preempt section 21.031 of the Texas Education Code. The court found that neither element of the preemption doctrine was present. The court ruled that Title I does not "oust the states from the field of education,"[318] and section 21.031 does not conflict with Title I.

The court applied a two-part analysis to conclude that the Texas law does not conflict with the Federal one. Noting that, "the court will assume that the legislature had no illicit purposes and that the [State] statute was not intended to regulate a matter subject to exclusive federal power," [319] the court said it must determine that neither the express language nor the interpretation of the statutes can conflict. The express language of the two statutes does not conflict, the court said, noting that "compliance with both the State and Federal statutes is not a physical impossibility."[320]

Regarding the interpretation and application of the two statutes, the court concluded likewise that there is no conflict. The purpose of Title I can be effected in Texas, the court reasoned, even if undocumented children are prevented from attending school. "The salient feature of Title I is that it is designed to provide supplementary funds to local educational agencies."[321] The court observed that Title I payments are based on census counts of children, not school enrollment, so the State statute's effect of excluding undocumented children from school has no effect on Title I. Furthermore, the court observed, Title I "does not designate the children who should benefit from federal assistance, but rather the schools which contain significant numbers of educationally deprived students."[322] Noting also that the "voluntary nature of Title I militates against finding that section 21.031 is pre-empted,"[323] the court concluded that Title I does not preempt section 21.031 of the Texas Education Code.[324]

Thus Judge Seal enjoined the defendants from enforcing section 21.031 of the Texas Education Code, which meant Texas schools had to open their doors to illegal alien children in the fall. The State of Texas petitioned the Fifth Circuit Court of Appeals to prevent the injunction from taking effect. The Circuit Court granted Texas' request and stayed the injunction in late August.

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[318] Id. 64-65.

[319] Id. 65.

[320] Id. 69.

[321] Id.

[322] Id.

[323] Id. 70.

[324] If there is a holding by the Supreme Court that Title I of the Elementary and Secondary Education Act of 1965 is preemptive, additional questions regarding Federal burden could be raised.

Supreme Court Justice Lewis Powell ruled in response to requests by plantiffs September 4, 1980, that the stay be vacated. The plaintiffs argued that the undocumented children "will suffer irreparable harm," while the injury to schools is minimal.[325] Commenting on the evidence presented during the district court trial, Justice Powell noted that:

> Not only are the children consigned to ingnorance and illiteracy; they also are denied the benefits of association in the classroom with students and teachers of diverse backgrounds. Instead, most of the children remain idle, or are subjected prematurely to physical toil, conditions that may lead to emotional and behavioral problems.[326]

The State argued that "the stay works minimal harm" on the undocumented children. To the contrary, Justice Powell found that the State's argument that, since undocumented children have been out of school for five years, an additional year to solve the problems associated with these children would cause no further harm "is meritless on its face."[327] Justice Powell pointed out that a delay would:

> exacerbate the deprivation already suffered and mitigate the efficacy of whatever relief [that] eventually may be deemed appropriate.[328]

In reaching his decision to vacate the stay, Justice Powell concluded that the harm to the undocumented children outweighs the proposition that the stay is paramount "to avoid irreparable harm to the independent school districts."[329] Powell pointed out, however, that if "the operation of the injunction would severely hamper the provision of education to all its students during the coming year, the granting of a stay would be justified."[330]

Thus the United States has taken the position in an *amicus curiae* brief that the children of undocumented aliens have a constitutional right to a free public education as other children have. Also, it has been decided in the Federal courts that Texas schools must provide the children of undocumented aliens a free public education. The question is whether this is sufficient "Federal connection" to warrant inclusion of children of undocumented aliens in the Impact Aid Program. All of the facts required for informed Commission consideration of this issue were not available to the Commission in the time given it to complete its study. Thus, the Commission is recommending to the Congress that it continue to study this issue.

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[325] *In Re Alien Children Litigation*, MDL No. 398, slip op. at 6 (U.S. Sept. 4, 1980) (Powell, Circuit Justice, 1980).

[326] *Id.*

[327] *Id.*

[328] *Id.* 7.

[329] *Id.*

[330] *Id.* 7-8.

ATTACHMENT I:

MAJOR REFUGEE AND UNDOCUMENTED ALIEN GROUPS IN THE UNITED STATES: DEMOGRAPHIC CHARACTERISTICS AND PROGRAMS OF FEDERAL ASSISTANCE

Introduction

The Commission undertook a demographic examination of refugees and undocumented aliens and a review of the Federal programs currently assisting those communities. The study examines refugee and undocumented alien populations and their relationships with the Federal Government.

Data available on refugees and undocumented aliens are limited. However, this data does describe the magnitude of the influxes, the demograhic characteristics of the four major refugee groups and the undocumented aliens, and indicates the location of their resettlement. The following is an overview of the Federal programs available, their budget and appropriation levels, and a discussion of five specific Federal departments (Departments of Agriculture, Education, Health and Human Services, Labor, and State) which provide initial resettlement services, cash and medical assistance, educational assistance, employment and training services, and food assistance programs.

The United Nations defines a refugee as any person who --

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; to who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return to it.331/

The United States, in the Refugee Act of 1980, has essentially adopted this definition and expanded it to include those within their own countries who have well-founded reasons to fear persecution.332/

331/ U.S. Committee for Refugees, World Refugee Survey 32 (1980) [hereinafter cited as World Refugee Survey].

332/ Title II of the Refugee Act of 1980, Pub. L. 96-212, §201(a)(42), 94 Stat. 109 (1980) (amending 8 U.S.C. 1101(a)).

The U.S. Committee for Refugees estimates in its 1980 World Refugee Survey that there were approximately 15.9 million refugees scattered thoughout the world at the beginning of 1980.[333] The survey points out that its count included persons who had fled their homelands years ago and whose lives are now well-established, although their legal status has never changed. The survey estimates that about three million people included in the above figure no longer require assistance though, technically, they remain refugees.

The U.S. Committee for Refugees also estimates that approximately one million, or about six percent, of these nearly 16 million refugees were in the United States at the beginning of 1980.[334] The Select Commission on Immigration and Refugee Policy stated in its October, 1980 newsletter that the United States will have paroled[335] a total of approximately 706,000 refugees, including Cuban/Haitian entrants of 1980, during the period from 1976 until the end of 1980.[336] This represents an average of 141,200 per year and a rate of 30,500 per month during 1980. It must be noted, however, that this total does not include previously paroled refugees who adjust to immigrant status each year. It also does not include refugee entries which were made under the conditional entry provision of the Immigration Nationality Act.[337] This provision described the type and number of conditional visa immigrants who could enter in the seventh category of the preference system, the refugee category, and defined "refugee" in geographically and ideologically restrictive terms. A report on refugee policy by the Congressional Research Service contains a 1975 through 1978 total for conditional entry refugees of 38,498.[338] The following table shows the Select Commission's yearly breakdown of immigration totals:

333/ World Refugee Survey, supra note 331, at 33-34. This total, like all others quoted herein, does not include births to refugees after arrival. No such figures are available at present.

334/ Id.

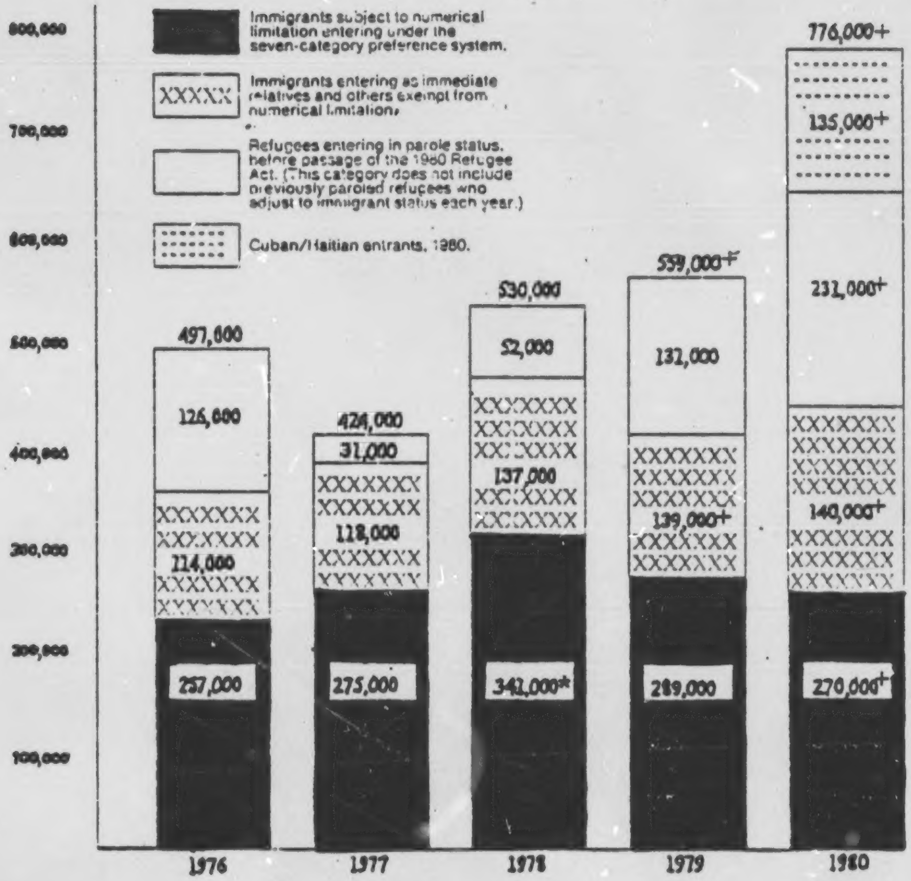
335/ Paroling is the action in which the Attorney General, by authority of section 212(d)(5) of the Immigration and Nationality Act of 1952 (Pub. L. 82-414, 66 Stat. 166), allows the admission into the United State of any aliens in emergency situations or for reasons considered to be in the public interest.

336/ Select Commission on Immigration and Refugee Policy, Newsletter 3 (Oct. 1980) [hereinafter cited as Newsletter].

337/ Title II of the Immigration and Nationality Act of 1952, Pub. L. 82-414, §203(a)(7), 66 Stat. 166; amended Sept. 21, 1961, Pub. L. 87-256, 75 Stat. 527; amended Oct. 3, 1965, Pub. L. 89-236, 79 Stat. 922.

338/ Congressional Research Service, Library of Congress, Review of U.S. Refugee Resettlement Programs and Policies, Senate Committee on the Judiciary 12 (Comm. Print 1980) [hereinafter cited as Resettlement].

U.S. IMMIGRATION, 1976-1980[339/]
(numbers rounded to nearest thousand)



* This figure includes about 286,000 numerically limited immigrants and 55,000 admitted as a result of the Silva court decision.
+ Number is based on an estimate.

Tables compiled by the Immigration and Naturalization Service (INS) from information gathered during its 1980 Alien Address Program show a total of 217,551 refugees in the United States. This information must be quoted within the context of its acquisition procedure. It is based on registration by the aliens themselves. Although registration is required by law, it is obviously not an accurate means of attaining total figures for aliens. In addition, the registration period was January 1980, after which a large number of refugees entered the United States. Nearly 125,000 Cubans arrived in the United States between April 21 and November 30, 1980.[340/]

[339/] Newsletter, supra note 336, at 3.

[340/] Cuban/Haitian Task Force, Department of State, Monthly Entrant Report for November 1980, at 7 (1980) [hereinafter cited as C/H Task Force].

The INS total refugee tables that include breakdowns by State of residence and country of origin are useful, nevertheless, not in determining reliable quantities, but percentages of what can be presumed to be a scaled-down whole for the beginning of 1980. According to these early INS figues, three States--California, Florida, and New York--contain about half the refugee population in the United States. The ten States containing the highest refugee populations are as follows:

REFUGEE POPULATION BY STATE, January 1980

1)	California	60,684
2)	Florida	28,772
3)	New York	19,131
4)	Texas	11,818
5)	Illinois	11,402
6)	Pennsylvania	7,616
7)	New Jersey	7,272
8)	Washington	6,553
9)	Minnesota	5,024
10)	Michigan	3,922

Source: INS

When these INS total refugee figures are taken as proportions of total State resident population for 1979, the order of the States is rearranged:

DEMOGRAPHIC IMPACT OF STATE REFUGEE POPULATIONS

		Refugee Pop. 1980/ State Resident Pop.
1)	Florida	.3247
2)	California	.2674
3)	Hawaii	.2569
4)	Washington	.1669
5)	Orgeon	.1515
6)	Nevada	.1241
7)	Minnesota	.1237
8)	Rhode Island	.1213
9)	Utah	.1144
10)	New York	.1084

Sources: These figures were calculated by the Commission using tables from INS and the Bureau of the Census.

After Florida, the four States containing the highest percentages of refugees to residents are all Pacific States.

The United States proposes to admit 217,000 refugees in fiscal year 1981. The following table shows the breakdown by area of origin.

REFUGEE ADMISSIONS[341]
Fiscal Year 1981

Area of Origin	Proposed Admissions Fiscal Year 1981
Indochina	168,000
Soviet Union	33,000
Eastern Europe	4,500
Near East	4,500
Latin America	4,000
Africa	3,000
TOTAL	217,000
Asylum Status Adjustments	5,000

Refugees come to the United States from all parts of the world. Refugees from Eastern Europe, the Near East, Africa, Latin America (excluding Cuba and Haiti), and Asia (excluding Indochina) were expected to number 30,200 by the end of fiscal year 1980 and 16,500 by the end of fiscal year 1981.[342] The majority of refugees currently settling in the United States originate in three areas: Indochina, Cuba and Haiti, and the Soviet Union.

Indochina

The term "Indochinese refugees" refers to those whose countries of origin are Vietnam, Laos, or Kampuchea (Cambodia). Tabulation by country in this group is not alway done because of the mobile nature of wartime Indochinese society. Due to the establishment of special government assistance programs, however, a wealth of data exists on the Indochinese as a whole, compared with other refugee groups.

According to a recent unpublished table by the Health and Human Services Office of Refugee Resettlement (ORR/HSS), the total Indochinese population in the United States as of October 31, 1980 was 426,633. Nearly all of these refugees arrived after the fall of Saigon in the spring of 1975, when 130,000 were airlifted[343] and some have by now achieved permanent resident status. The Office of the U.S. Coordinator for Refugee Affairs (OCRA) estimates that 416,000 Indochinese entered the country under parole or other provisions of the Immigration and Nationality Act during the period extending from the fall of Saigon until the end of fiscal year 1980.[344/] According to another unpublished ORR/HSS table, 166,727 Indochinese arrived in the United States in fiscal year 1980, a rate of 14,000 per month.

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[341] Office of the U.S. Coordinator for Refugee Affairs, Department of State, Report to Congress: Proposed Refugee Admissions and Allocations for Fiscal Year 1981, table I (Sept. 1980) [hereinafter cited as Proposed Admissions FY 1981].

[342] Office of the U.S. Coordinator for Refugee Affairs, Department of State,and Office of Refugee Resettlement, Department of Health and Human Services, Refugee Resettlement Resource Book, 9 (Oct. 1980)

[343] Resettlement, supra note 338, at 13.

The Indochinese Refugee Action Center, a private organization in Washington, D.C., estimated that there would have been 389,000 Indochinese refugees in the country as of August 31, 1980, or one for every 566 other inhabitants in the United States. The following table shows that only Canada and Australia had lower ratios:

INDOCHINESE REFUGEES BY COUNTRY OF RESETTLEMENT[345/]

Country	1979 Est. Population (Millions)	Total Through 8/30/80	Refugees Per # Other Inhabitants
United States	220.3	389,000	1 to 566
Peoples Republic of China*	950.0	240,000	1 to 3,958
France	53.4	76,288	1 to 700
Canada	23.7	52,348	1 to 453
Australia	14.4	37,756	1 to 380
German Federal Republic	61.2	14,013	1 to 4,371
United Kingdom	55.8	13,087	1 to 4,292
Malaysia	13.3	2,919	1 to 4,586
Switzerland	6.3	3,273	1 to 1,969
Belgium	9.8	3,447	1 to 2,882
Norway	4.1	3,289	1 to 1,242
Sweden	8.3	2,267	1 to 3,608
Argentina	26.7	4,500	1 to 5,933
Taiwan	17.3	1,000	1 to 17,300
Denmark	5.1	1,370	1 to 3,642
Italy	56.9	1,365	1 to 41,684
Netherlands	14.0	1,980	1 to 7,071
Spain	37.6	1,001	1 to 37,600
Zimbabwe-Rhodesia	7.2	1,000	1 to 7,200

* China accepted 230,000 ethnic Chinese from the northern part of Vietnam, and promised to accept 10,000 more. The refugees were moved to agricultural settlements in southern China.

The Immigration and Naturalization Service, as a result of its Alien Address Program in January, 1980, provides significantly lower Indochinese figures: 128,553 refugees, 253,062 total. These tabulations, like

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[344/] Proposed Admissions FY 1981, supra note 341, at table 1.

[345/] Indochina Refugee Action Center, Indochina Refugees Resettling in All Parts of the World, in World Refugee Survey, supra note 331, at 16.

those INS figures on total refugees referred to previously, were compiled earlier than the above and are based on registration by the individual aliens themselves, not on entry data. However, the total refugee figure is broken down by nationality showing the Indochinese refugee population to be approximately 71 percent Vietnamese, seven percent Cambodian, and 22 percent Laotian.

The United State continues to resettle an average of almost 14,000 Indochinese refugees per month.[346] Refugees usually settle near their former countrymen. In the case of the Indochinese, this often means California, Texas, Washington, or Pennsylvania--States which contain about half the Indochinese in the United States. The following is an unpublished ORR/HHS list of State Indochinese population, with the top ranked ten:

U.S. INDOCHINESE POPULATION, BY STATE/TERRITORY, 1980

STATE	TOTAL INDOCHINESE POPULATION	RANK	STATE	TOTAL INDOCHINESE POPULATION	RANK
1) Alabama	2,211		29) Nevada	1,875	
2) Alaska	412		30) New Hampshire	291	
3) Arizona	2,936		31) New Jersey	4,062	
4) Arkansas	2,665		32) New Mexico	2,135	
5) California	139,067	1	33) New York	12,451	8
6) Colorado	7,573		34) North Carolina	3,729	
7) Connecticut	4,059		35) North Dakota	579	
8) Delaware	257		36) Ohio	6,078	
9) D.C.	3,319		37) Oklahoma	6,301	
10) Florida	8,655		38) Oregon	12,552	7
11) Georgia	4,440		39) Pennsylvania	17,280	4
12) Hawaii	5,881		40) Rhode Island	2,350	
13) Idaho	802		41) South Carolina	1,588	
14) Illinois	16,004	5	42) South Dakota	876	
15) Indiana	3,785		43) Tennessee	3,335	
16) Iowa	7,036		44) Texas	37,166	2
17) Kansas	5,405		45) Utah	5,613	
18) Kentucky	1,807		46) Vermont	224	
19) Louisiana	10,511	10	47) Virginia	11,945	9
20) Maine	639		48) Washington	18,831	3
21) Maryland	4,709		49) West Virginia	417	
22) Massachusetts	6,671		50) Wisconsin	6,043	
23) Michigan	7,851		51) Wyoming	321	
24) Minnesota	14,438	6	52) Virgin Islands	8	
25) Mississippi	1,352		53) Guam	379	
26) Missouri	4,315		54) Puerto Rico	35	
27) Montana	1,030		OTHER & UNKNOWN	287	
28) Nebraska	2,052		TOTAL	426,633	

Source: ORR/HHS

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[346] Office of Refugee Resettlement, Department of Health and Human Services, unpublished tables [hereinafter cited as ORR/HHS].

In terms of demographic impact, the States rank somewhat differently. The following are the top ten States ranked by 1980 Indochinese population as a percentage of total 1979 resident population:[347]

DEMOGRAPHIC IMPACT
INDOCHINESE POPULATION

Indochinese Population as Percent of Total State Population

1)	Hawaii	0.6427
2)	California	0.6128
3)	Oregon	0.4967
4)	Washington	0.4796
5)	Minnesota	0.3567
6)	Texas	0.0277
7)	Colorado	0.2732
8)	Nevada	0.2671
9)	Louisiana	0.2616
10)	Rhode Island	0.2530

Sources: These figures were calculated by the Commission using tables from ORR/HHS and the Bureau of the Census.

The Pacific States currently contain approximately 41 percent of the Indochinese population in the United States but only 14 percent of the total United States resident population.[348] As these western States contain the usual ports of entry for the Indochinese and because the Indochinese influx began only five years ago, they probably should not yet be considered ultimate locations of resettlement. However, a pattern of secondary migration within the United States is emerging which shows that, while Oregon and Hawaii are losing relatively small numbers, California and Washington are gaining substantially and that the Alaskan Indochinese refugee population is remaining nearly constant. The following unpublished table indicates the flow of the Indochinese refugee population within the United States:

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[347] The District of Columbia, not included in the ranking of States, shows a relatively high percentage of its population as Indochinese --0.51 percent. This figure may be overstated, however. ORR/HHS assumes that refugees record relief headquarters in the District of Columbia as their place of residence when they are in the process of resettling in Maryland or Virginia.

[348] ORR/HHS, *supra* note 346, Bureau of Census, Department of Commerce, *Population Estimates and Projections* 6 (Feb. 1980).

ESTIMATED NET SECONDARY MIGRATION (ESM) OF INDOCHINESE REFUGEES BY STATE, JANUARY 1979 - JANUARY 1980

STATE	ESM†	STATE	ESM†
1) Alabama	- 300	28) Nebraska	- 450
2) Alaska	*	29) Nevada	- 150
3) Arizona	- 200	30) New Hampshire	*
4) Arkansas	- 550	31) New Jersey	+ 200
5) California	+ 9,350	32) New Mexico	- 250
6) Colorado	- 550	33) New York	- 950
7) Connecticut	- 50	34) North Carolina	- 150
8) Delaware	*	35) North Dakota	- 200
9) D.C.**	- 2,650	36) Ohio	- 300
10) Florida	- 750	37) Oklahoma	- 400
11) Georgia	- 450	38) Oregon	- 400
12) Hawaii	- 700	39) Pennsylvania	- 300
13) Idaho	*	40) Rhode Island	- 150
14) Illinois	+ 100	41) South Carolina	*
15) Indiana	- 300	42) South Dakota	- 50
16) Iowa	*	43) Tennesse	- 1,100
17) Kansas	+ 300	44) Texas	+ 600
18) Kentucky	- 300	45) Utah	- 250
19) Louisiana	- 300	46) Vermont	*
20) Maine	- 50	47) Virginia	+ 750
21) Maryland	+ 300	48) Washington	+ 1,150
22) Massachusetts	+ 400	49) West Virginia	*
23) Michigan	+ 150	50) Wisconsin	+ 100
24) Minnesota	+ 250	51) Wyoming	+ 50
25) Mississippi	*	52) Virgin Islands	*
26) Missouri	- 450	53) Guam	- 50
27) Montana	- 100	54) Puerto Rico	*

* Less than 50.

** See note 347, supra.

† Estimated net inflow (+) or net outflow (-) of Indochinese from or to a State. Derived from adjusted INS alien registration data and data on initial resettlement location of new refugees who arrived in the United States during 1979. Figures are rounded to the nearest 50. The net inflow and net outflow were approximately 13,800 each. Figures do not add to total due to rounding.

Source: ORR/HHS.

Other States with large Indochinese populations that are attracting additional Indochinese from within the United States are Texas, Illinois, Minnesota, and Virginia. Pennsylvania, New York, and Louisiana have experienced losses due to secondary migration.

Once resettled, Indochinese refugees have shown gains in employment and income relative to the length of their residency. The following tables illustrate this:

LABOR FORCE PARTICIPATION RATE, INDOCHINESE REFUGEES[349]

Year of Entry	Male	Female
1977	58.4%	29.6%
1976	65.5	34.4
1975	69.1	42.9
U.S. rate	78.2	50.7

MONTHLY HOUSEHOLD INCOME, INDOCHINESE REFUGEES[350]

	Year of Entry		
	1975*	1976	1977
Under $200	2.7%	3.3%	4.6%
$200-399	3.6	4.1	5.6
$400-599	4.4	6.2	15.8
$600-799	11.6	15.7	12.4
$800 and over	77.6	70.2	60.8
Unknown	0.0	0.5	0.8
TOTAL	99.9%	100.0%	100.0%

* The sum of this column is not 100.0% due to rounding.

This evidence seems to support the contention of the Office of the U.S. Coordinator for Refugee Affairs that "experience in the country of resettlement, a chance to become proficient in English, and an opportunity to adjust to American society and its economy are constributing factors to labor force pacticipation."[351]

Also affecting these figures, however, is an apparent dichotomy in the composition of the Indochinese refugee population during the years covered. According to the ORR/HHS, it is known, though not yet documented, that the current "new wave" Indochinese refugees--those, including the so-called "boat people," who arrived after 1977--are generally less educated and of lower financial strata than their predecessors. Many have non-transferable job experience and little exposure to Western urban life.[352] Correspondingly, it could be assumed that a lower percentage of the recent Indochinese refugees are conversant in English.

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[349] Social Security Administration (SSA) and Office of Refugee Affairs, Department of Health, Education, and Welfare, *Report to Congress: Indochinese Refugee Assistance Program* 6 (Dec. 31, 1979) [hereinafter cited as *Assistance Program*].

[350] *Id.* 7.

[351] *Proposed Admissions, FY 1981*, *supra* note 341, at 35.

[352] *U.S. Refugee Programs: Hearing Before the Senate Committee on the Judiciary*, 96th Cong., 2d Sess. 336 (Apr. 17, 1980) (statement of the Inspector General, Department of Health, Education, and Welfare on the Indochinese Refugee Assessment).

The following tables were compiled by the Commission from information gathered during April, May, and June, 1979, on 1,608 Vietnamese, 814 Cambodian, and 1,117 Laotian refugees who were admitted to the United States through December, 1977. The first shows the percentage in each group of refugees who understand English.

ENGLISH UNDERSTANDING, INDOCHINESE REFUGEES[353]
Age 16 and over

	Vietnamese*	Cambodians	Laotians*
Not at all	11.5%	11.3%	16.0%
Some	59.8%	69.9%	59.2%
Well	28.8%	18.8%	24.7%

* These figures do not add to 100.0% due to rounding.

The Laotian group contained the highest percentage of refugees who did not understand English at all. The Vietnamese group contained the highest percentage of those who reportedly understood it well and the Cambodians had the lowest percentage of those who did not.

Other results of this survey indicated some of the economic effects of these levels of English proficiency. These are summarized in the following three tables:

ECONOMIC EFFECT OF ENGLISH PROFICIENCY, INDOCHINESE REFUGEES
(weighted percentages)

	Understand English (%)		
VIETNAMESE[354]	Not at all	Some	Well
Labor Force Participation	33.0%	56.1%	61.3%
Unemployment Rate*	11.7	2.9	2.7
Earn $200 or more/week+	26.4	41.6	48.7

	Understand English (%)		
CAMBODIAN[355]	Not at all	Some	Well
Labor Force Participation	4.1%	70.4%	69.3%
Unemployment Rate*	—	7.3	—
Earn $200 or more/week+	22.2	36.8	41.8

* The seasonally-adjusted unemployment rate in the United States for May 1979 was 5.8 percent according to the Bureau of Labor Statistics (BLS), Department of Labor.

+ The labor force participation rate in the United States for May 1979 was 63.5 percent, according to the BLS.

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[353] Refugee Task Force, Department of Health, Education, and Welfare, *Seventh Wave Report: Indochinese Resettlement Operational Feedback*, table 5 (July 10, 1979) [hereinafter cited as *Seventh Wave Report*].

[354] *Assistance Program*, *supra* note 349, at 7.

[355] *Seventh Wave Report*, *supra* note 353, tables 4, 15, and 5.

LAOTIAN[356]	Understand English (%)		
	Not at all	Some	Well
Labor Force Participation	12.4%	56.3%	66.6%
Unemployment Rate*	--	2.6	2.3
Earn $200 or more/week+	--	24.2	41.2

* The seasonally-adjusted unemployment rate in the United States for May 1979 was 5.8 percent according to the Bureau of Labor Statistics (BLS), Department of Labor.

+ The labor force participation rate in the United States for May 1979 was 63.5 percent, according to the BLS.

A direct effect on wages by English proficiency is shown in these tables, as well as the degree to which lack of English-understanding ability inhibits labor force participation. Of the Indochinese not seeking employment, 21.2 percent of the Vietnamese, 8.2 percent of the Cambodians, and 22.3 percent of the Laotians cited "poor English" as their primary reason for not doing so.

A thorough study by the ORR/HSS of the sociodemographic characteristics of refugee populations is in progress. It is presently known that the Indochinese refugee tends to be younger than the average United States resident. As of January 1, 1980, 37.0 percent of the Indochinese refugee population was under the age of 18 years and 31.2 percent of the total was from six to 17 years old.[357] When the later figure is applied to the ORR/HHS Indochinese population total of 426,633, a schoolage Indochinese population of 133,109 can be estimated for the end of October, 1980. In comparison, 28.4 percent of the United States population in 1979 was under 18 and 20.0 percent was from six to 17 years of age.[358]

Levels of education and of familiarity with English also vary greatly within the second wave. According to OCRA, it is evident that a number are illiterate, many are nonconversant in English, and that often the Indochinese refugee child has experienced long periods of interruption in his or her schooling. Special educational problems result. In addition, the latest group's concentration in the ten to 16-year-old bracket will cause these children to be introduced to the American educational system in the center of the K-12 progression.[359]

Cuba

The INS has listed a total of 669,151 Cuban arrivals from January 1, 1959 to September 30, 1978. The following is a breakdown of that figure by period of entry:

356/ Id.
357/ ORR/HHS, supra note 346.
358/ Bureau of the Census, Department of Commerce.
359/ Proposed Admissions, FY 1981, supra note 341, at 32-33.

CUBANS ARRIVED IN THE UNITED STATES
JANUARY 1, 1959 - SEPTEMBER 30, 1978

	January-June, 1959	26,527
Year ending June 30,	1960	60,224
"	1961	49,961
"	1962	78,611
"	1963	42,929
"	1964	15,616
"	1965	16,447
"	1966	46,688
"	1967	52,147
Year ending June 30,	1968	55,945
"	1969	52,625
"	1970	49,545
"	1971	50,001
"	1972	23,977
"	1973	12,579
"	1974	13,670
"	1975	8,488
"	1976	4,515
	1976*	1,439
Year ending Sept. 30,	1977	3,104
"	1978	4,108
	TOTAL	669,151

* Transitional quarter.
Source: INS

OCRA provides a figure of 700,000 for the number of those who left Cuba for the United States prior to the 1980 wave of immigration.[360] It is estimated in a report by the Congressional Research Service that between 1959 and 1971, 10,000 to 20,000 of these 700,000 returned to Cuba.[361] The 1980 influx accounted for approximately an additional 125,000 Cubans during the period from April 21 to the end of November.[362] These figures indicate a range of 805,000 to 815,000 Cuban entrants since 1959. OCRA puts the total over the past two decades at over 900,000.[363]

The amount of these 805,000 to 900,000 Cubans that can be designated properly as refugees is unknown. Thousands who entered as refugees have, in their years of residence in the United States, so established their lives that they no longer require refugee assistance, although they remain refugees in a legal sense.[364] There are no accurate figures

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360/ Office of the U.S. Coordinator for Refugee Affairs, Department of State, Overview of World Refugee Situation 59 (Aug. 1980) [hereinafter cited as Overview].

361/ Congressional Research Service, Library of Congress, World Refugee Crisis: The International Community's Response, Senate Committee on the Judiciary 212 (Comm. Print 1979) [hereinafter cited as World Refugee Crisis].

362/ C/H Task Force, supra note 340, at 7.

363/ Id. 2.

364/ World Refugee Survey, supra note 331, at 32.

available on Cubans who do require such aid. Of the Cuban aliens recorded by the INS Alien Address Program in January, 1980, however, 11.2 percent--37,503[365] --registered as refugees. Adding this figure to the April through November total of nearly 125,000 results in a current Cuban refugee total of at least 162,503.

Florida was the State of initial resettlement for 87.6 percent of the Cuban refugees who arrived during fiscal year 1979 and fiscal year 1980, according to unpublished ORR/HHS tables that are incomplete for 1980. California, with 3.6 percent, and New Jersey, with 3.5 percent, were second and third. The following is a ranking of States and territories by percentage of total Cuban refugee population as recorded in the INS Alien Address Program, January, 1980, indicating some movement of the Cuban refugee population away from Flordia:

CUBAN REFUGEE POPULATION

1)	Florida	60.6%
2)	New Jersey	11.2
3)	California	8.6
4)	New York	7.3
5)	Puerto Rico	3.1
6)	Illinois	2.5

Source: INS

If Florida's percentage in the above table can be applied to the previously estimated Cuban refugee minimum of 162,503, an approximate Cuban refugee total of 98,477 could be determined for the State, which would represents 1.1 percent of Florida's 1979 resident population of 8,860,000.[366] In comparison, the State most highly impacted by total refugee and non-refugee Indochinese population--Hawaii--has a ratio of approximately 0.6.[367]

In their November report, the Department of State's Cuban/Haitian Task Force estimated that about 18 percent of the 1980 entrants were under 18 and 12 percent were in the 5-17 age group. The percentage of children was said to have risen steadily from mid-May.[368] A recent influx of approximately 15,000 school-age Cuban refugee children can be derived by applying the 5-17 bracket percentage to the "boatlift" total of 125,000. The Task Force's August report notes low levels of proficiency in

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[365] Immigration and Naturalization Service, Department of Justice, Alien Address Program unpublished tables (Jan. 1980) [hereinafter cited as *INS*].

[366] Bureau of the Census, Department of Commerce.

[367] *See* table p. 349, *supra*.

[368] *C/H Task Force*, *supra* note 340, at 13.

English and of education among 110,313 of the 1980 Cuban entrants: two percent to five percent were estimated to speak English and the average education was estimated to be 5th to 8th grades. The occupational background of these refugees, approximately 54 percent of whom were males aged 18 through 59, was thought to be primarily in manual labor.[369]

Haiti

There were 223,000 to 325,000 Haitians in the United States in mid 1979,[370] according to a Senate Judiciary Committee report, though only 22,672 registered as aliens in January, 1980.[371] New York City contained 200,000 to 300,000 Haitians,[372] by far the largest portion, equaling 1.1 percent to 1.6 percent of the State's 1979 resident population of 17,648,000[373] Miami had 8,000 to 10,000 Haitian residents and approximately 15,000 others were located elsewhere in the country.[374] An additional 15,000 Haitians are known to have arrived during the first half of 1980,[375] at least 5,500[376] of whom can be added to the Committee Report's Miami figure. Of the 8,000 Haitians apprehended between 1974 and the beginning of 1980 for illegal entry, 550 have been deported.[377]

Information on the characteristics of the Haitian alien population is, at the moment, limited to that gleaned from preliminary evaluation of data compiled on the 1980 entrants. The Cuban/Haitian Task Force of the Department of State, which is currently analyzing this data, has stated that these Haitians are mostly single males between 20 and 40 years old. Females make up 20 to 25 percent of the total.

Miami's Community Action Agency, one of the sources for the Cuban/Haitian Task Force's information, has records of 10,343 Haitians who arrived from April 17 to November 28, 1980. Males 16 to 43 years of age made up about 80 percent; males under 12 years of age made up approximately eight percent. Approximately 95 percent of the Haitians surveyed could neither read nor write English, 95 to 98 percent were thought to have been laborers in Haiti, and the average level of education, according to the CAA, was second to fifth grades.

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[369] Cuban/Haitian Task Force, Department of State, Cuban Entrant Data Report 2 (Aug. 1980).

[370] World Refugee Crisis, *supra* note 361, at 218.

[371] INS, *supra* note 365.

[372] World Refugee Crisis, *supra* note 361, at 218.

[373] Bureau of the Census, Department of Commerce.

[374] World Refugee Crisis, *supra* note 361, at 218.

[375] Overview, *supra* note 360, at 54.

[376] Office of the U.S. Coordinator for Refugee Affairs, Department of State, Report to the Congress Regarding Cuban and Haitian Entrants 17 (Sept. 1980).

[377] John Tenhula, "Boat People" Flee Haiti to U.S., in World Refugee Survey, *supra* note 331, at 52.

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The Council of Jewish Federations, in unpublished ORR/HSS tables, has totals of 25,034 and 21,027 Soviet Jewish refugee arrivals for fiscal years 1979 and 1980. The Hebrew Immigrant Aid Society (HIAS), which assists nearly all the Soviet Jews entering the United States, has stated that 14,568 arrived during the first nine months of 1980. The following table lists the yearly totals of HIAS-assisted Soviet Jewish refugees from 1975:

1975	5,250
1976	5,512
1977	6,842
1978	12,265
1979	28,794

Source: HIAS

The World Refugee Survey shows 4,750 Soviet Armenians in the United States at the beginning of 1980, though its count of only 30,000 Soviet Jewish refugees may indicate that these are actually totals for 1979 only.[378] The INS Alien Address Program tables have a total of 13,725 Soviet refugees in the country in January 1980.

Soviet refugee admissions for fiscal year 1980 were expected to be about 30,000, according to OCRA, which has proposed that 33,000 be admitted during fiscal year 1981.[379] Soviet authorities, however, are apparently putting tighter restrictions on emigration. A November 19, 1980 news dispatch indicated exit visas were being issued at half the rate of 1979 when 50,000 people were allowed to emigrate.[380]

A representative of the Tolstoy Foundation, which assists Russian refugees, has stated that most wish to be settled in specific urban areas and that usually this is done. Soviet Jews favor New York City, Chicago, Los Angeles, and San Francisco, while Soviet Armenians prefer Los Angeles. Of the Soviet Jewish refugee arrivals in fiscal year 1980, according to the Council of Jewish Federations,[381] 44.2 percent initially settled in the State of New York, 10.2 percent in California, and 8.1 percent in Illinois.

Almost half of the Soviet Jewish refugees assisted by HIAS in 1979 were 21 to 50 years old.[382] Those under the age of 21 constituted 26.8 percent, 14.7 percent were under 11, and 8.3 percent were in the six to ten-year-old bracket.

378/ Bruce Leimsidor, Hebrew Immigration Aid Society, Refugees Leave Soviet Union, in World Refugee Survey, supra note 331, at 36 [hereinafter cited as Leimsidor].

379/ Proposed Admissions FY 1981, supra note 341, at 7.

380/ Washington Post (Nov. 19, 1980).

381/ ORR/HHS, supra note 346.

382/ Hebrew Immigrant Aid Society, Analysis of HIAS-Assisted USSR Arrivals in the United States January 1 - December 31, 1979, unpublished [hereinafter cited as HIAS 1979 Analysis].

Soviet Jewish refugees in general tend to be better educated than the recent Indochinese, Cuban, or Haitian entrants. According to HIAS, "the most distinctive aspect of this migration may well be the high educational level of both men and women family members."[383] Forty percent of the Soviet Jewish refugees of working age are estimated by HIAS to have university educations[384] and 38 percent of the 1979 HIAS-assisted Soviet Jewish arrivals were listed under the occupational headings of "Professionals," "Engineers," "Technicians," or "White Collar" in a recent data analyis.[385]

Undocumented Aliens

Illegal aliens, now more commonly referred to as "undocumented aliens," were defined in a June, 1977, House Judiciary Committee report:

> Illegal aliens are persons of foreign nationality who have entered the United States unlawfully; or who, after legal entry, have violated the terms of their admission, generally by overstaying and/or accepting unauthorized employment.[386]

This definition is followed by the statement that no reliable estimates are available on the total illegal alien population in the United States. Such an opinion is echoed in a background paper for the study of the undocumented alien problem by the Select Commission on Immigration and Refugee Policy:

> No [data on the number and types of all illegal workers] exists; estimates of the size of the illegal populaton contain large errors and do not permit sufficient regional disaggregation for multivariate cross-sectional analysis; no annual time-series on the total illegal migrant population exists.[387]

A special paper on illegal residents in the United States submitted by the Census Bureau on January 31, 1980, to the Select Commission entitled "Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States," contained the statement that "there are currently no reliable estimates of the number of illegal aliens in the United States or of the net volume of illegal immigrants to the United States in any recent past period."[388] Similar statements were repeated in every relevant document reviewed by the Commission.

383/ *Leismidor*, *supra* note 378.

384/ *Id.*

385/ *HIAS 1979 Analysis*, *supra* note 382.

386/ Congressional Research Service, *Illegal Aliens: Analysis and Background*, House Committee on the Judiciary 1 (Comm. Print June 1977) [hereinafter cited as *Illegal Aliens*].

387/ Select Commission on Immigration and Refugee Policy, *The Economic Impacts of Illegal Migrants* 5 (unpublished).

388/ Jacob S. Siegel, Jeffrey S. Passel, and J. Gregory Robinson, *Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States*, Bureau of the Census, Department of Commerce 2 (Jan. 31, 1980) [hereinafter cited as *Siegel*].

The Immigration and Naturalization Service is the ultimate source of most data on undocumented aliens. The reasons INS figures are not very useful, according to the House Committee report, are that offenses are recorded--not offenders; the figures are apparently a function of INS funds and manpower; and because these funds are limited, the numbers reflect INS enforcement priorities. One example of how the INS totals can be distorted by these factors is that because the INS maintained no overnight facilities for women at least as late as 1976, INS agents were usually reluctant to apprehend them. Another is the INS force concentration on the Mexican border because of the priority of entry prevention.

The authors of the Census Bureau's "Preliminary Review" termed INS estimates of 8.2 million illegal residents in the United States in 1975 and six million in 1976, "iterative informed guesswork" and "synthetic speculation," respectively. INS estimates ranged from one to 12 million in the period from 1973 to 1976.[389/] The INS itself is the first to admit that such data is, to some degree, educated speculation, and in 1978 began a Residential Survey of the foreign-born population in order to gather "harder" data. The results of this survey are not yet available. The authors of the "Preliminary Review" offer "cautious speculation" of their own that the total number of illegal residents in the United States in 1978 "is almost certainly below 6.0 million, and may be substantially less, possibly only 3.5 to 5.0 million."[390/]

The following INS table presents yearly illegal alien figures from 1961 to 1980:

DEPORTABLE ALIENS LOCATED, YEARS ENDED JUNE 30, 1961-1976, TRANSITION QUARTER JULY-SEPTEMBER 1976, AND YEARS ENDED SEPTEMBER 30, 1977-1980

Period	Deportable aliens located*
1961-1980	9,927,648
1961-1970	1,608,356
1961	88,823
1962	92,758
1963	88,712
1964	86,597
1965	110,371
1966	138,520
1967	161,608
1968	212,057
1969	283,557
1970	345,353

* The 1960 figures are for total deportable aliens located, including crewman violators.

[389/] Illegal Aliens, supra note 386, at 3.

[390/] Siegel, supra note 388, at 19. These and other estimates by Siegel are not official estimates of the Bureau of the Census.

DEPORTABLE ALIENS LOCATED, YEARS ENDED JUNE 30, 1961-1976, TRANSITION QUARTER JULY-SEPTEMBER 1976, AND YEARS ENDED SEPTEMBER 30, 1977-1980

(continued)

Period	Deportable aliens located
1971-1980	8,319,292
1971	420,126
1972	505,949
1973	655,968
1974	788,145
1975	766,600
1976	875,915
1976*	219,618
1977	1,042,215
1978	1,057,977
1979	1,076,418
1980	910,361

* Transition quarter.

Source: INS.

The alien apprenhensions in 1975, indicated by the preceding table--766,600--were almost twice the amount of legal immigrants that year.[391]

The origin of most aliens apprehended by the INS is Mexico. A report published in 1975 by Lensko Associates, under contract to the INS, estimated the illegal Mexican resident population at about 5.2 million.[392] Most Mexican undocumented aliens are believed to be located in the southwestern United States.[393] The following tables reflect the degree to which Mexicans constitute a majority of the aliens apprehended and the origins of the others:

DEPORTABLE ALIENS LOCATED, FISCAL YEARS 1975-1980

	Total	Mexican	Mexican as percent of total
1975	766,600	680,392	89
1976*	875,915	781,474	89
1976	219,618	198,553	90
1977	1,042,215	954,778	92
1978	1,057,977	976,667	92
1979	1,076,418	998,830	93
1980	910,361	817,479	90

* Transition quarter.

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[391] *Illegal Aliens*, *supra* note 386, at 3.
[392] *Id.*
[393] *Siegel*, *supra* note 388, at 17.

DEPORTABLE ALIENS, BY NATIONALITY, FISCAL YEAR 1980

NATIONALITY	NUMBER LOCATED
All countries	910,361
Europe	10,712
Greece	1,793
Italy	1,453
United Kingdom	2,089
Other Europe	5,377
Asia	23,157
China	1,599
Philippines	3,766
Other Asia	17,792
North America	860,344
Canada	6,769
Mexico	817,479
B.W.I. and Belize	1,848
Dominican Republic	3,080
El Salvador	11,792
Guatemala	3,785
Other North America	15,591
South America	8,757
Colombia	2,737
Ecuador	1,348
Other South America	4,672
Africa	2,523
Other Nationalities	4,868

Source: INS

It must be reiterated that the INS figures in these tables are actually numbers of apprehensions; thus there is the possibility that these numbers may reflect multiple counts of single aliens. Also, INS enforcement focuses on the Mexican border. The authors of the "Preliminary Review," after studying INS figures and the half dozen undocmented alien studies and analyses conducted throughout the 1970's, concluded that "it does not appear that there is a substantial amount of permanent movement of illegals to the United States from Mexico." They argued that the seasonal return flow to Mexico is almost as large as the flow to the United States. In other words, illegal Mexican aliens who are statistically indicated as being in the United States on what is implied to be a permanent basis are, in fact, unlike most non-Mexican undocumented aliens, not always in the United States. They are migrants recorded as residents. The authors of the "Preliminary Review" estimate the Mexican illegal resident population to be "almost certainly less than 3 million" and possibly only 1.5 to 2.5 million.

According to a 1976 undocumented alien data summary by North and Houstoun, Mexican illegal aliens are usually recorded as adult males with an average age of 27-28 years.[394/] In another study prepared by North and

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394/ Illegal Aliens, supra note 386, at 12.

Houstoun for the Department of Labor in 1976, as well as in studies by Dagodag in 1975, and Reichert and Massey in 1979, about 75 percent of illegal Mexican migrants are males 15 to 44 years of age.[395] (The low percentage of woman can, perhaps, be partly explained by the previously mentioned lack of INS female dentention facilities.) In their Department of Labor study, North and Houstoun estimated an average of 4.9 years of schooling for the Mexican and that 76.4 percent did not speak English.[396]

The non-Mexican component of the the illegal resident population, according to the "Preliminary Review," comes primarily from Haiti, the Dominican Republic, and South America. Secondary sources are Asia, particularly the Philippines, and Africa. The previously noted estimate of a total Haitian population of 223,000 to 325,000 compared with the INS 1980 Alien Address Program figure of only 22,672 Haitian alien registrants seems to reinforce the findings in the "Preliminary Review" that Haiti is a primary source of illegal aliens in the United States.

Most non-Mexican undocumented alien residents, it is believed by the authors of the "Preliminary Review," enter the United States with legal status and violate the time limits of their visas or enter with fraudulent documents. They very tentatively estimate the number of non-Mexican fraudulent entrants combined with the undocumented aliens who entered without inspection by the INS to be less than a few million. The number of those non-Mexicans who have overstayed or otherwise violated the terms of their visas are estimated to "number in the millions," depending on the definition of visa violation. These estimates indicate that the non-Mexican illegal alien population makes up a larger share of the total illegal alien population than is commonly believed. The authors offer the statement that "...non-Mexican illegal immigration may add to the permanent resident population to a far greater extent than the Mexican migration flows."

Most non-Mexican undocumented aliens are believed to be located in the urban areas of the Midwest and East.[397] The demographic characteristics of Haitians in the United States have already been noted. Limited information exists on the other groups. The North-Houstoun Department of Labor study contained an estimate that non-Mexican Western Hemisphere undocumented aliens had an average of 8.7 years of schooling and that 53.2 percent did not speak English. Eastern Hemisphere undocumented aliens had a average of 11.9 years of formal education and 16.2 percent did not speak English. This same study showed that non-Mexican undocumented aliens tend to enter the United States with their families while Mexican undocumented aliens tend to enter without their families.[398]

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[395] *Siegel*, *supra* note 388, at 15.

[396] *Illegal Aliens*, *supra* note 386, at 13.

[397] *Siegel*, *supra* note 388, at 17.

[398] *Illegal Aliens*, *supra* note 386, at 13.

Overview of Federal Assistance to Refugees and Cuban/Haitian Entrants

In the first nine months of 1980, approximately 126,000 Indochinese, 125,000 Cubans, 15,000 Haitians, and 14,500 Soviet Jews arrived in the United States. These, the major refugee groups in 1980, total 280,500. For fiscal year 1980, an additional total of 30,200 refugees were expected from elsewhere in Latin America, Asia, Eastern Europe, the Middle East, and Africa. Admission levels proposed by the Office of the U.S. Coordinator for Refugee Affairs (OCRA) for fiscal year 1981 indicate a continuation of the 1980 Indochinese resettlement rate of 14,000 per month, for a total of 168,000. The proposed refugee figure for the Soviet Union is 33,000. Levels for other areas bring the total proposed refugee admission level to approximately 217,000.

The Refugee Act of 1980, Public Law 96-212,[399] contains a comprehensive framework for developing refugee policies, procedures and programs in the United States. Sections 301(b)(1) through (9) of the Refugee Act of 1980, Public Law 96-212,[400] established and directs the Office of the U.S. Coordinator for Refugee Affairs to:

1) provide overall United States refugee policy;

2) coordinate international and domestic admission and resettlement programs;

3) design the overall refugee budget strategy with policy guidance to Federal agencies;

4) present the administration's refugee policy and its relationship to Federal agencies' budget requests to the Congress;

5) advise the President, the Secretary of State, the Attorney General, and the Secretary of Health and Human Services on the relationship of the overall refugee policy to the admission and resettlement of refugees in the United States;

6) represent the United States to other governments and international organizations concerning the refugee issues;

7) act as a liaison between the Federal Government, voluntary resettlement agencies, governors, mayors, and others;

8) recommend to the President Federal priorities concerning the admission of refugees; and

9) review Federal regulations, guidelines, requirements, and procedures.

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[399] Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102-118 (amending 22 U.S.C. §2601-2605 (1975)).

[400] Refugee Act of 1980, Pub. L. No. 96-212, §§301(b)(1) to 301(b)(9), 94 Stat. 109-110.

Although the Refugee Act of 1980 established the framework for selecting groups of refugees abroad for admission to the United States, the Act did not take into account the massive and uncontrolled influx of Cubans and Haitians to the shores of Florida beginning in April, 1980. Approximately 140,000 Cubans and Haitians have entered the United States. The Cubans and Haitians who arrived in the "boat lift" were by law undocumented aliens seeking asylum in the United States. The Federal Government requires a strict examination for those persons seeking asylum, including a case-by-case review of each applicant seeking asylum. The Cuban and Haitian arrivals were left in limbo without the proper overseas processing and valid documentation which presently exists as the Federal mechanism for screening asylum applicants. As a result, the Cubans and Haitians were ineligible for Federal assistance, and, by present standards for granting asylum, were prevented from qualifying for admission under that category. The Administration sought a balance between protecting the lives of Cubans and Haitians and enforcing standing immigration laws.

Pending permanent legislative solutions, the Administration, on June 20, 1980, announced that the parole of Cubans and Haitians who arrived in the United States between April 21 and June 19, 1980, and whose asylum requests were pending in INS proceedings, be renewed for six months. The Cubans and Haitians would be eligible for Federal assistance such as Aid for Families with Dependent Children (AFDC), Medicaid, and Supplementary Security Income (SSI) under the entrant status.

For fiscal year 1980, the Administration requested a supplemental appropriation of $385 million to provide funds for processing, maintenance, transportation, initial relocation, health, and education. The actual fiscal year 1980 supplemental appropriation was $346 million.

Ambassador Victor H. Palimeri, appointed by the President to the post of U.S. Coordinator for Refugee Affairs, chairs the Interagency Committee for Refugee Affairs. The Committee consists of representatives of all Federal agencies involved in, and responsible for, the domestic refugee programs. Those agencies are the Departments of Commerce, Defense, Education, Health and Human Services, Housing and Urban Development, Justice, Labor, and State, as well as representatives from the Central Intelligence Agency, Domestic Council, Office of Management and Budget, and the National Security Council. Table I gives a budget overview of all refugee assistance which is expected to amount to a total of $1.4 billion in fiscal year 1980. The estimated costs of refugee assistance in fiscal year 1981 for each Federal agency program (as shown in Table II) are projected to be $1.6 billion. The budget for the office of the U.S. Coordinator for Refugee Affairs in fiscal year 1980 and 1981 is approximately $550,000.[401/]

401/ Office of the U.S. Coordinator for Refugee Affairs.

TABLE I

FISCAL YEAR 1980 BUDGET OVERVIEW

PROJECTED COSTS OF REFUGEE ASSISTANCE

(in millions of $)

Indochinese Resettlement	$212
Soviet, Eastern European and Other Resettlement	62
FY-1980 Cost of FY-1980 Refugee Admissions--HHS	244*
Estimated Cost of Food Stamps for FY-1980 Admissions	50*
SUBTOTAL	$568

PROJECTED COSTS OF CUBAN/HAITIAN ENTRANTS

(in millions of $)

Processing, Transportation, and Care and Maintenance	$346
Resettlement	39
State and Local Government	100
SUBTOTAL	$485

U.S. CONTRIBUTIONS TO INTERNATIONAL REFUGEE RELIEF

(in millions of $)

Indochina Assistance	$ 50
Kampuchean Famine	117
Africa	55
Middle East	22
United Nations Relief and Works Agency	52
Food for Peace (estimate)	100
Other	10
SUBTOTAL	$406

TOTAL $1.459 billion

* The cost will be approximately twice this in fiscal year 1981 since refugees admited in fiscal year 1980 will be receiving services for the entire fiscal year.

Source: Office of the U.S. Coordinator for Refugee Affairs

TABLE II

ESTIMATED COSTS OF REFUGEE ASSISTANCE IN FISCAL YEAR 1981
(in millions $)

FEDERAL AGENCY PROGRAMS	COST FY 1981 ARRIVALS[402]	TOTAL FY 1981 COSTS
Department of State:		
Care and Maintenance of Refugees Abroad[403]	169.00	169.00
Admissions Processing	14.75	14.75
Transportation to U.S.	132.40	132.40
Initial Reception and Placement Grants	105.95	105.95
Administrative and Operational	5.00	5.00
Other International Programs	0.00	105.20
Subtotal	427.10	532.30
Department of Health and Human Services:		
Office of Refugee Resettlement (ORR):		
Cash Assistance	60.60	269.40
Supplemental Security Income (State Supplementation)	(1.30)	(5.00)
Aid to Unaccompanied Minors	(2.00)	(4.80)
Medical Assistance	29.50	139.40
Social Services	70.40	93.70
State Administrative Costs	11.30	49.60
Educational Assistance[404]	19.50	44.30
Voluntary Agency Program (Aid to Non-Cuban, Non-Indochinese)	26.00	26.00
Preventive Health	7.80	7.80
Center for Disease Control	(3.00)	(3.00)
Health Service Administration	(4.80)	(4.80)

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[402] The 1981 appropriations now pending before the Congress will provide funding for the admission of 210,000 refugees to the United States. The Administration will attempt to meet any additional costs associated with the revised admissions for fiscal year 1981 by reprogramming. If necessary, the Administration may have to seek supplemental appropriations.

[403] This figure may overstate the cost of care and maintenance for refugees resettled in the United States in fiscal year 1981, since it repesents United States contributions to international and private organizations whose caseloads also include refugees not destined for the United States. However, in some areas such as Southeast Asia, the majority of the refugees resettled leave for the United States, yet third-country contributions account for 70 percent of the budget for the Office of the United Nations High Commissioner for Refugees.

[404] Administered by Department of Education.

TABLE II (cont.)

ESTIMATED COSTS OF REFUGEE ASSISTANCE IN FISCAL YEAR 1981
(in millions $)

FEDERAL AGENCY PROGRAMS	COST FY 1981 ARRIVALS	TOTAL FY 1981 COSTS
Dept. of Health & Human Services (cont.)		
Applicants for Asylum	0.00	12.00
Federal Administration	-	5.50
Cuban Phasedown Program	0.00	44.80
Subtotal	225.20	693.60
Aid to Families With Dependent Children	9.20	41.00
Supplemental Security Income (Federal)	3.90	17.40
Medicaid	6.00	26.50
Other HHS Subtotal	19.10	84.90
Department of Agriculture:		
Food Stamps Program and Other Programs	36.50	175.00
Department of Education*	-	33.00
Immigration & Naturalization Service	2.50	2.50
Agency for International Development		
Food for Peace*	-	87.10
Department of Defense	-	4.00
Department of Commerce	-	0.30
Department of Housing and Urban Development	-	17.60
Department of Labor	-	53.00
Department of Justice	-	1.50
ACTION	0.00	1.50
FEDERAL GOVERNMENT TOTAL	711.90	1,687.30

* These figures are based on estimates by Federal agencies as of February 15, 1980. Funding is generally not earmarked specifically for refugees, nor is an estimate of costs for 1981 arrivals versus prior arrivals available.

Source: Office of the U.S. Coordinator for Refugee Affairs

Department of State

The Department of State is primarily involved in the initial relief and resettlement of refugees. Such activites are developed and programmed by the Department under the auspices of the Bureau of Refugee Affairs and carried out by 11 voluntary agencies under contract. The voluntary agencies participating in the agreement receive a grant of several hundreds of dollars per refugee for initial reception and placement services. These agencies also find sponsors for the refugees from local communities. The purpose for sponsoring refugees is to aid in their becoming economically self-sufficient as quickly as possible.

The 1980 estimated expenditure of domestic resettlement for refugees from Indochina will be $215 million and for the refugees from the Soviet Union and Eastern Europe the expenditure is expected to total $268 million. Table III gives a detailed listing of program activities and expenditures for both domestic programs administered by the Bureau of Refugees Programs, Department of State.

TABLE III

BUREAU OF REFUGEE PROGRAMS, U.S. DEPARTMENT OF STATE--BUDGET

Programs	Program Activities	1981 Estimated Expenditure	1981 Appropriation Request	Increase or Decrease
1) Domestic Indochinese Refugees Program	a. Selection & documentation	$ 9,596,977	$ 9,500,000	$ -96,977
	b. Resettlement movements	$121,461,000	$121,800,000	$ +4,200,000
	c. Reception & placement grants	$ 84,000,000	$ 88,200,000	$ +4,200,000
	Subtotal	$215,057,977	$219,500,000	$ +4,442,023
2) Domestic Soviet Eastern European and Other Refugee Programs	a. Care & Maintenance, including selection & documentation	$ 29,739,390	$ 37,118,000	$ +7,378,610
	b. Transportation	$ 7,200,000	$ 7,340,000	$ +140,000
	c. Placement grants	$ 16,061,500	$ 15,330,000	$ -731,500
	Subtotal	$ 53,000,890	$ 59,788,000	$ +6,787,110
	TOTAL	$268,058,867	$279,288,000	$+11,229,111

Source: Office of the U.S. Coordinator for Refugee Affairs.

Department of Health and Human Services

Sections 411 and 412 of the 1980 Refugee Act[405/] define the responsibilities for the Office of Refugee Resettlement in the Department as providing assistance to refugees after their initial placement in various communities. The Office, on the whole, administers social services, cash assistance, and medical assistance to refugees through existing Federal programs which are administered by State governments. Additionally, the Office of Refugee Resettlement administers specific programs for refugees from Cuba, the Soviet Union, and other countries.

Social Services. Title XX of the Social Security Act[406/] or by instructions specifically set out for Refugee Social Services by the Office of Refugee Resettlement authorizes the type of social services available to refugees. In fiscal year 1979, the Office obligated nearly $31.5 million to the States for social services for Indochinese refugees. For fiscal year 1980, the Office received a total of $94.7 million for State social services programs. However, the funds for fiscal year 1980 are for all refugees without regard to geographical origin. For fiscal year 1981, the Office has requested an appropriation of $93.7 million for social services programs.

Cash Assistance. Under Section 412(e) of Title IV of the 1980 Refugee Act,[407/] needy refugees may qualify for Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI) if they meet the established eligibility guidelines. The Office assumes the costs of cash assistance to refugees for a period of three years after they enter the United States. The Office pays for 100 percent of the cash assistance cost for those refugees eligible under the Refugee Program Assistance, and reimburses States for the cost of providing AFDC benefits to refugees. The Social Security Administration pays the Federal share of assistance to refugees and the federal benefit to SSI recipients. Finally, the Office reimburses States for any supplementary payments made to refugee SSI recipients.

In fiscal year 1979, the number of monthly AFDC refugee recipients averaged 28,621 and 26,806 for monthly Refugee Program Assistance. Additionally, an average of 2,800 cases a month received SSI payments. The Office has recorded that, as of February 1, 1980 approximately 130,000 Indochinese refugees or 43.2 percent were receiving some form of AFDC or Refugee Program Assistance.[408/]

405/ Refugee Act of 1980, Pub. L. No. 96-212, §§411 and 412, 94 Stat. 111-115.

406/ Refugee Act of 1980, Pub. L. No. 96-212, §412(e), 94 Stat. 114. Title XX of the Social Security Act.

407/ Resettlement, supra, note 338. Part A, Title IV of the Social Security Act. Title XVI of the Social Security Act.

408/ Office of Refugee Resettlement, Department of Health and Human Services.

In fiscal year 1979, the Office reimbursements to States for AFDC refugee recipients totaled $16.1 million. The reimbursements for Refugee Program Assistance for fiscal year 1979 amounted to $39.6 million. According to the Social Security Administration, SSI payments to refugees for fiscal year 1979 were $4.8 million and the Office of Refugee Resettlement reimbursement for State supplemental SSI benefits totaled $2.9 million. Administrative reimbursement to States totaled $8.9 million for fiscal year 1979, also. For fiscal year 1980, the total cash assistance appropriation was $165.2 million, and additional supplemental appropriation totals $16.8 million. The appropriation request by the Office of Refugee Resettlement for total cash assistance for fiscal year 1981 amounts to $266.5 million.

Soviet and Cuban Refugee Resettlement Programs. The Soviet and other non-Cuban, non-Indochinese refugee resettlement programs provide national voluntary resettlement agencies reimbursements up to 50 percent of the cost to resettle such refugees. These agencies are allowed a maximum of $1,000 per refugee.[409] These Federal grants allow for activities directed toward acculturation in order that the refugee achieve immediate employment and earnings. In fiscal year 1979, reimbursements to voluntary agencies amounted to $26.7 million of which $25.7 million was used by agencies serving Soviet Jewish refugees. In fiscal year 1980, the total appropriation was $25 million. The fiscal year 1981 appropriation request is $24 million.

The Cuban program serves those Cuban refugees who entered the United States between 1959 and 1979. The program does not serve the recent 1980 Cuban entrants.[410] Those Cuban refugees fitting such a requirement are eligible for cash assistance, medical assistance, and social services, which States normally provide for their own residents. The fiscal year 1981 appropriation request is $44,880,000 which will provide for 100 percent reimbursement to States that administer such services to Cuban refugees who entered the United States after September 30, 1978. However, reimbursements for those Cuban refugees who entered before September 30, 1978, for the non-Federal costs of providing cash and medical assistance, are prorated from fiscal years 1980 to 1983. The phase-down levels for reimbursements are as follows: fiscal year 1980--75 percent, fiscal year 1981--60 percent, fiscal year 1982--45 percent, and fiscal year 1983--25 percent.[411]

Medical Assistance. Title IV of the Immigration and Naturalization Act[412] and Title XIX of the Social Security Act[413] grant refugees the right to apply for medical assistance under Medicaid. The eligibility

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409/ Id.
410/ See pp. 361-362, supra.
411/ Refugee Act of 1980, Pub. L. No. 96-212, §414(c), 94 Stat. 117.
412/ Title IV of the Immigration and Naturalization Act.
413/ Title XIX of the Social Security Act.

criteria for non-Medicaid medical assistance is established under HEW policy instruction SRS-AT-75-27 (June 9, 1975). The Medicaid program is administered by the Health Care Financing Administration (HFCA) and is normally an expense shared by both the States and the Federal Government. However, in the case of refugees, the portion of the Medicaid costs usually paid by the States is paid by the Office of Refugee Resettlement, which covers 100 percent of the costs of medical assistance provided to needy eligible refugees during their first three years in the United States. Refugees that do not meet eligibility standards for the Medicaid program (those generally eligible for cash assistance qualify for Medicaid) may still receive medical assistance. This non-Medicaid medical assistance, which is the same service offered under a State Medicaid program, is paid at the full cost by the Office of Refugee Resettlement.

Medicaid costs for Indochinese refugees for fiscal year 1979 amounted to $4.2 million. Non-Medicaid medical assistance costs were $16.5 million. In fiscal year 1980, the refugee medical assistance appropriation was $82.0 million with an additional $8.5 million supplemental appropriation for non-Indochinese refugees. The fiscal year 1981 appropriation request is $139.4 million for Medicaid and non-Medicaid medical assistance for all refugees.

Department of Education

The Department of Education administers four programs offering direct assistance to local educational agencies which experience an increase in enrollment of refugee children. The programs that address the specific educational needs of refugee children are: the Transition Program for Refugee Children, the Cuban/Haitian Entrant Program, the Refugee Education Assistance Program, and the Indochina Refugee Children Assistance Program. In addition to the four programs targeted for refugees, the Office of Bilingual Education and Minority Affairs provides Federal financial assistance to those local educational agencies, State educational agencies, institutions of higher education, and non-profit organizations to meet the special educational needs of limited English speaking children. This program is not earmarked for refugees per se; however, the Federal assistance offered is targeted for those students with limited English speaking proficiency. Such students are frequently refugee children entering the United States. For school year 1980, it is estimated that there are 133,109 Indochinese and 14,884 Cuban schoolage children in the United States. Presently, there are no figures available for Haitian schoolage children.

Transition Program for Refugee Children. In fiscal year 1980, the Department of Health and Human Services received $100 million from a supplementary appropriation to its budget. Under an interagency agreement, the Department of Health and Human Services transferred $23 million of that appropriation to the Department of Education to administer the Transition Program for Refugee Children. The Transition Program has not been fully designed. The Department of Education expects to issue final regulations by late January, 1981. However, the Department has noted in its proposed regulations of September 11, 1980, that direct Federal grants to local educational agencies were preferred "because the funds are distributed faster and the program operates more efficiently because they do not have to work through an intermediary, the state educational agency." The Department, on the contrary, proposed that State educational agencies administer two types of State-administered formula grant projects. The first project calls for a subgrant project in which the State receives the money from the Department and then awards subgrants to local educational agencies with large concentrations of refugee children. The subgrant is based on a weighted formula that takes into account the recent arrival of refugee children, the number of refugee children enrolled in the schools, the lack of English-speaking proficiency, and the age of the children. The second project will allow States to compete for funds for those eligible children not enrolled in a local educational agency receiving a subgrant from the State. In addition, there would also be discretionary grants for projects such as curriculum development, instructional material centers, and evaluation.

The assistance offered under the program will emphasize special English language instruction. The concept underlying the program is to make the transition into the mainstream of American society as successful as possible for refugee children. For fiscal year 1981, the Department of Health and Human Services has requested $44 million which will be transferred to the Department of Education to administer the Transition Program.

Cuban/Haitian Entrant Program. The Cuban/Haitian Entrant Program received $7.7 million in fiscal year 1980 to aid those public schools presently receiving Cuban and Haitian entrant children. The Entrant Program is funded under the Secretary of Education's Discretionary Projects as established under section 303 of the Education Amendments of 1978, Public Law 95-961.[414] It has been proposed that the Cuban/Haitian Entrant Program be tailored in the same fashion as the Transition Program for Refugee Children.

Refugee Education Assistance Program. The Refugee Education Assistance Act of 1980, Public Law 96-422,[415] provides general assistance to local educational agencies up to a maximum of $450 for each Cuban and Haitian refugee or entrant child entering the United States on or after November 1, 1979.[416] Additionally, the Act allows special impact assistance for substantial increases in Cuban, Haitian, and Indochinese refugee children up to $750 per child for districts who are accutely affected by a marked increase in enrollment of these students.[417] For fiscal year 1981, the Department of Education has requested an appropriation of $15 million.

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[414] Act of November 1, 1978, Pub. L. No. 95-961, §303, 92 Stat. 2210-2211.

[415] Refugee Education Assistance Act of 1980, Pub. L. No. 96-422, 94 Stat. 1799-1810.

[416] Id., §201, 94 Stat. 1801-1802.

Indochina Refugee Children Assistance Program. Title II of the Indochina Refugee Children Assistance Act, Public Law 94-405, as amended by Public Law 95-961,[418] was appropriated $12 million in accordance with the Continuing Resolution, Public Law 96-123,[419] enacted November 20, 1979. The Indochina Refugee Children Assistance Program expended such funds to meet the educational needs of those refugee students who entered public schools during the 1979-80 school year. The appropriation under the Continuing Resolution provided approximately $240 per refugee child[420] in which Federal grants were made to States and in turn used to make subgrants to local educational agencies in order to provide the type of education services necessary for the Indochinese refugee child. Section 103 of the Act[421] provides funds to State educational agencies to assist local educational agencies in providing such children with supplementary educational services, additional basic instructional services, and special inservice training. The Indochina Assistance Staff within the Department of Education estimates that approximately $3 million will be carried over into fiscal year 1981.

Office of Bilingual Education and Minority Languages Affairs. Title VII of the Elementary and Secondary Act of 1965, as amended by the 1978 Education Amendments of 1978, Public Law 95-961,[422] authorizes the Office of Bilingual Education and Minority Affairs to identify those children who lack proficiency in English and to make funds available for projects and activities which provide bilingual education to local educational agencies, State educational agencies, institutions of higher education, and non-profit organizations. Each project or activity administered by the Office is carried out through a discretionary grant or contract awarded for bilingual aid projects and support activities, which in fiscal year 1979 amounted to $158.6 million. The Office reported that of the amount of funds available for fiscal year 1979--$6 million--was specifically made available to Indochinese refugees. The amount available to the Office for fiscal year 1980 was $167 million and the appropriation request for fiscal year 1981 will be $192 million.

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[417] Id., §301, 94 Stat. 1803-1805.

[418] Title II of the Indochina Refugee Children Assistance Act of 1976, Pub. L. No. 94-405, §§201 to 208, 90 Stat. 1229-1233, as amended by Pub. L. No. 95-961, §331, 92 Stat. 2363-2264.

[419] Act of November 20, 1979, Pub. L. No. 96-123.

[420] Indochina Refugee Staff, Department of Education.

[421] Title I of the Indochina Refugee Children Assistance Act of 1976, Pub. L. No. 94-405, §103, 90 Stat. 1227.

[422] Bilingual Education Act, 20 U.S.C.A. §880b (1974 & Supp. 1978).

Department of Labor

The Department of Labor encourages the employment of refugees through existing programs and service systems. Specifically, the Employment and Training Administration (ETA) within the Department has primary responsibility for refugee work experience and work training programs. The ETA accomplishes the necessary outreach to refugees through the provisions of the Comprehensive Employment and Training Act (CETA) of 1973, as amended,[423] which includes the United States Employment Service (USES)[424] and Targeted Jobs Tax Credit Program (TJTC).[425] The CETA funds are allocated by formula to an estimated 473 "prime sponsors." Generally, these prime sponsors are offices of mayors, county officials, and governors. These State and local units of government identify the areas in which refugees need training and employment services and respond by subcontracting voluntary resettlement agencies and their local affiliates, State human resources agencies, refugee self-help organizations, and other service providers to deliver such services. However, there are no available statistics on the number of refugees served and the amount of funds specifically for refugees because prime sponsors do not tally the number of subcontracts serving refugees.

In addition to the programs offered by ETA, the Office of Youth Programs (OYP) complements a select number of CETA programs with high-refugee populations. Assisted by Job Corps, OYP offers young refugees of ages ranging from 16 to 21 with programs of education and vocational skills training. There are 100 Job Corps centers operating in ten regions throughout the United States which train refugee youths to obtain and hold productive jobs, return to school, or satisfy armed forces entrance requirements.[426] The Office of Youth Programs reported that, as of the end of 1980, 1,100 Indochinese refugee youths have been enrolled in Job Centers across the country and $492,000 has been allocated from OYP's discretionary fund.

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[423] The Comprehensive Employment and Training Act of 1973, as amended. "Department of Labor: Employment and Traning Administration; Comprehensive Employment and Training Regulations; Final Rule and Proposed Rule," in Federal Register, vol. 45, 99, part IX (Tuesday, May 20, 1980).
Department of Labor, ETA Field Memorandum No. 126-80 (Jan. 23, 1980).
Department of Labor, ETA Field Memorandum No. 170-80 (Feb. 29, 1980).

[424] Department of Labor, USES Program Letter No. 10-79 (Sept. 19, 1979).

[425] Department of Labor, Manpower Administration Field Memorandum No. 85-80 (Dec. 19, 1979).

[426] Title IV of the Youth Employment and Training Program.
ETA, Office of Youth Programs, Department of Labor, "An Employment and Training Strategy for Refugee Youth" (Dec. 1979).
Department of Labor, Jobs Corps Notice No. 80-54 (July 10, 1980).

Department of Agriculture

The Food Stamp Program, (FSP)[427] the School Lunch Program[428] and Breakfast Program,[429] and the Supplemental Food Program for Women, Infants, and Children (WIC)[430] are all administered by the Food and Nutrition Service (FNS), Department of Agriculture. These food assistance programs are available to all eligible refugees and Cuban/Haitian entrants and is operated in cooperation with State and local governments. FNS in fiscal year 1980 estimates that the total amount available for Food Stamp benefits was $115.4 million. The appropriation request for fiscal year 1981 is $191.6 million. The School Lunch and Breakfast Programs estimate that refugees received $10.6 million in fiscal year 1980 and estimate that for fiscal year 1981, the programs will receive a total of $20 million for refugees. In the third and fourth quarters for fiscal year 1981,[431] the WIC Program received $3,485,716, and for fiscal year 1981, recipients will be limited to fourth quarter fiscal year 1981 levels.

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[427] Food Stamp Act of 1977, Title 13, Pub. L. No. 95-113, §6(f) (Sept. 29, 1977) (amending Food Stamp Act of 1964).

[428] Child Nutrition Act of 1960.

[429] National School Lunch Act, enacted 1946.

[430] Pub. L. No. 95-627.

[431] The WIC Program provides special grants for food purchases and administrative costs to States which serve a substantial number of refugees. The program does not affect the current grant to which State agencies are entitled. Below is a table indicating the estimates of the number of possible eligible participants by State and average costs to serve those refugees.

Indochinese Refugees and Haitians, FY 1980

	Food Grant	Admin. Grant	Total Grant
Delaware	1,178	393	1,571
Maryland	149,957	40,595	190,552
New Jersey	53,283	16,534	69,817
New York	307,311	75,390	382,701
Virginia	174,984	43,171	218,155
West Virginia	1,745	582	2,327
Florida	157,080	38,510	195,590
Georgia	9,314	3,105	12,419
Oklahoma	28,164	8,726	36,890
Minnesota	341,592	83,990	425,582
Wisconsin	215,898	54,887	270,785
Iowa	70,650	19,246	89,896
Kansas	50,148	13,823	63,971
Missouri	30,750	9,843	40,593
Nebraska	186,984	45,772	232,756
South Dakota	68,556	19,250	87,806
Utah	341,269	81,350	422,619
California	599,269	141,978	741,688
NATIONAL TOTALS	2,788,573	697,143	3,485,716

Source: Food and Nutrition Service, Department of Agriculture.

VI. WHICH LOCAL EDUCATIONAL AGENCIES SHOULD BE ELIGIBLE FOR IMPACT AID PAYMENTS?

Since the inception of the Impact Aid Program, the Congress has limited participation in the program by establishing minimum eligibility standards for local educational agencies. As the law now stands, in order for a local educational agency to qualify for payment, it must have either 400 federally-connected children in its average daily attendance, or the number of federally-connected children must equal three percent of total average daily attendance. In either case, the local educational agency must have at least ten federally-connected children. The fairness and necessity of such minimum requirements in the Impact Aid Program has been a subject of debate.

In developing eligibility requirements, the Congress sought to confine the program to local educational agencies which had a heavy concentration of federally-connected children in attendance. As a result of this policy almost every large city school system was eliminated because federally-connected children, while present in large numbers, did not represent a large precentage of enrollment. Since 1950, eligibility requirements have been relaxed so that virtually no local educational agency with a significant number of federally-connected children is excluded from the program. In fact, the local educational agency of almost every large city now participates in the program.

It appears that the underlying premise of limiting participation has eroded over the last 30 years. Thus, an examination of the fairness and necessity of a minimum eligibility requirement is warranted. Prior studies of the program have pointed out the inequities of the eligibility requirements upon local educational agencies not qualifying.432/

432/ The Stanford Research Institute Study stated:

> This situation creates two important lines of discontinuity--one between those districts with slightly less than 3% federally connected ADA that receive no P.L. 874 funds and those districts with slightly more than 3% federally connected ADA that receive funds for all eligible pupils; and the other (and more important) between those large districts slightly less than 6% federally connected ADA that receive P.L. 874 funds for all (at least 2,100) eligible pupils. A more equitable program would be to require all districts--eligible or noneligible, large or small--to absorb the same percentage of federal students before federal payments were made. [Stanford Research Institute, 89th Cong., 1st Sess., Impacted Areas Legislation Report and Recommendations, Senate Subcommittee on Education of the Committee on Labor and Public Welfare 115 (Comm. Print 1965).]

The legislative history of the Impact Aid Program indicates that the three percent eligibility figure was set by the Congress as an estimate of an average level of Federal impact throughout the country. It was thought that only those local educational agencies having an above-average Federal impact should be compensated.[433] The Commission has not succeeded in obtaining evidence to support that estimate.

There have been a number of proposals to require that local educational agencies receiving Impact Aid payments absorb the cost of educating a number of federally-connected children equal to the number of children a local educational agency must have to be eligible. The rationale is that it is inequitable for ineligible local educational agencies to receive no compensation for educating some federally-connected children, while eligible agencies receive compensation for all such children. A time-limited absorption provision was part of Impact Aid originally inasmuch as large school districts were excluded.

In the original law, local educational agencies having an enrollment in excess of 39,000 were, in order to be eligible, to have to meet a six percent requirement. For those agencies meeting the six percent requirement, there was also a requirement that they absorb the cost of education for a number of federally-connected children equal to three percent of their enrollment. This absorption provision continued so long as the higher percentage for eligibility was retained.

In 1953, a general absorption requirement for all local educational agencies at a level equal to the eligibility requirement was adopted by the Congress. The effective date of the absorption requirement was twice delayed and then it was repealed, so that it never took effect.

In 1974, the Congress adopted a narrower absorption requirement which was based upon an average number of "B" children in all eligible local educational agencies. This provision was in effect for one year before it was repealed.

These absorption requirements were opposed with the contention that higher percentages of federally-connected children represent a greater concentration of Federal burden and that an absorption requirement constitutes a greater burden on eligible local educational agencies than on those not meeting the three percent threshold.

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[433] See Battelle Memorial Institute, 91st Cong., 2d Sess., School Assistance in Federally Affected Areas: A Study of Public Laws 81-874 and 81-815, House Committee on Education and Labor, at X, XI (1970). See also Lawrence L. Brown, III, Alan L. Ginsburg & Martha Jacobs, Impact Aid Two Years Later, An Assessment of the Program as Modified by the 1974 Education Amendments 111 (1978).

According to the Stanford Reserch Institute study, "the basic requirements for eligibility....[illegible]e based on the premise that every school district should be able to absorb small numbers of federally-connected pupils without hardship."[434] Thus it appears that the absorption concept has been artificially wedded to the eligibility factor. It is analytically clearer to deal with absorption as a matter of computing the amount of payments to local educational agencies. Moreover, since local educational agencies may now be eligible with as few as 400 federally-connected children, the concept of making eligibility equal to some estimated national average of Federal impact no longer holds.

There appears to be little, if any, reason to set an arbitrary limit on participation in the program based on a percentage of federally-connected children in the schools of a local educational agency. The obligation of the Federal Government for the education of those children is the same for each federally-connected child without regard for whether that child is one of a number constituting 2.9 percent of enrollment or 3.0 percent of it. It has been suggested previously that since it can be argued that each federally-connected child gives rise to some type of burden, there should be no minimum impact to qualify for assistance under the program.[435]

Amplifying on existing inequities of the eligibility provision, I.M. Labovitz wrote in 1963, "...the only feasible cure for this difficulty may lie in abandonment of the 3 per cent minimum requirement where this exceeds 10 pupils.... Such a change would invite a multitude of relatively small current-expense claims and entail a considerable increase in administrative costs, but it would promote equity and uniformity."[436]

The percentage eligibility requirement, therefore, appears to have no empirical foundation and is a vestige of an old policy designed to limit the size of the program. It has the effect of ignoring the obligation for the service burden to the excluded local educational agencies.

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[434] Stanford Research Institute, 89th Cong., 1st Sess., Impacted Areas Legislation Report and Recommendations, Senate Subcommittee on Education of the Committee on Labor and Public Welfare 114 (Comm. Print 1965).

[435] The Battelle study states that:

> ...there is very little logical basis for defining a particular cut-off point for eligibility, once one eliminates the case where the program would cost more to administer than the assistance it would provide. [Battelle Memorial Institute, 91st Cong., 2d Sess., School Assistance in Federally Affected Areas: A Study of Public Laws 81-874 and 81-815, House Committee on Education and Labor 112 (1970).]

[436] I.M. Labovitz, Aid for Federally Affected Public Schools 190 (1963).

The arguments on both sides of proposals surrounding both the eligibility and absorption questions were stated in terms of burden and equity among local educational agencies. Underlying the proposals for higher eligibility requirements and for absorption have been budgetary considerations. Indeed, the recent proposals for curtailing the program were submitted as budget requests and stated in terms of reducing the cost of the program. These proposals would, had they been adopted, have required local educational agencies to absorb the cost of educating federally-connected children. They were not, however, based upon a percentage of enrollment, but upon the percentage of the local educational agencies' budget which the Impact Aid payment constituted.

Eligibility for Impact Aid payments is conceptually tied to an assessment of the burden of Federal activities placed upon local educational agencies. As such, this requirement ought not be based on budgetary considerations which fluctuate from year to year and have no relationship to Federal burden.

The Commission has consistently avoided the use of budgetary considerations in making determinations regarding the existence of, or the amount of, burden. If budgetary considerations are to have the effect of limiting participation in the program, it is more appropriate that they should be a factor in that section of the law designed for limitations on payments: priorities in allocating funds when appropriations for any fiscal year are insufficient to satisfy all entitlements.

Even though the original purpose of the eligibility requirement is no longer valid, there are administrative reasons for retaining some minimum number of federally-connected children as a prerequisite for receiving Impact Aid payments based on a policy that the administrative work necessary for processing an application and making a payment is more costly both to the applicant and to the Federal Government than any benefit derived from the small payment which would result from the application. This is a requirement with historical support both within the Impact Aid Program[437/] and in other Federal education programs,[438/] though inflation and other economic factors may warrant either an increase or reduction in this threshold. The Federal Government has not, however, made a determination that such an alteration is warranted.

For these reasons, the Commission recommends that the current eligibility requirements be retained, with the understanding that this recommendation is based only on a consideration of administrative efficiency.

[437/] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 12 (1950).

[438/] Title I of the Elementary and Secondary Education Act of 1965, Pub. L. No. 95-561, §111(b)(1), 92 Stat. 2156 (1978) [amending 20 U.S.C.A. §3241c(b)(1) (1974)].

VII. WHAT SHOULD BE THE AMOUNT OF COMPENSATION?

After having found that local educational agencies should be compensated for the burdens placed upon them by Federal activities, that there are obligations which arise with respect to the education of federally-connected children, the question the Commission addressed was the amount of that compensation.

In general, the amount of compensation under current law is based upon a calculation of the "service burden" (the cost of educating federally-connected children) rather than an estimated "revenue burden" (the loss of revenue by reason of Federal immunity from local taxation). The exception is the case of payments under the current section 2 which are payments for loss of revenue.

The degree to which payments under section 3 are based upon the service burden is greater now than was the case under the original law.

The amount of compensation a local educational agency receives under section 3 is determined by multiplying the number of federally-connected children in various categories by an appropriate percentage of the local contribution rate (LCR) for that local educational agency.

As Impact Aid was originally written,[439/] the LCR for a local educational agency in any State is determined for each year on the basis of the local portion of average per-pupil current expenditures by generally comparable local educational agencies in the State. This method of computation was designed to insure that the entitlement per child would be "roughly equivalent to the amount per child which other property owners in comparable communities pay toward the cost of educating children,"[440/] since it is difficult to calculate how much revenue would be raised locally in a federally-affected community in the absence of Federal ownership.

The effect of the local contribution rate approach was to compensate local educational agencies for losses in local revenues--not for any loss of State revenues. No portion of payment was to be made in consideration of the State share of the cost of educating children because, according to legislative history of the original law, (1) the tax-exempt status of Federal property did not operate to reduce State revenues, and (2) State governments could realize as much revenue from the parents of federally-connected children through sales, income, and other taxes as from other parents in the State.[441/]

[439/] See Attachment I, *infra*, for legislative history of local contribution rate provisions of Public Law 874.

[440/] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 12 (1950).

[441/] *Id.* 13.

Thus the LCR concept as originally formulated reflected congressional concern with the "revenue burden" on local educational agencies. It did not necessarily reflect the cost of educating federally-connected children or the educational needs of federally-connected children. In fact, the theory behind the original LCR concept is neutral on the question of educational needs. It presupposes that the Federal Government should pay local educational agencies the money necessary for treating the educational needs of federally-connected children the same way they treat those of children who are not federally-connected.

The LCR concept has been followed more in theory than in practice since 1950. Amendments to Public Law 874 in 1953, 1956, and 1958 made it possible for local educational agencies to choose LCRs other than those with comparable districts. In 1953, local educational agencies were given the option of choosing half the State average per-pupil expenditure as LCR; in 1956 districts were allowed to choose half the national average local contribution rate. In 1958, that option was changed to make the alternative half the national per-pupil expenditure.

The 1953 Amendment. The House Committee on Education and Labor acknowledged in 1953 that a "basic principle" of Impact Aid as originally enacted was:

> the concept that the Federal Government would compensate a local school district for the burden imposed on such district by the Federal Government and would pay its just share of the school maintenance and operation costs borne from local taxation.[442]

The Committee observed in 1953 that "this concept is sound where the bulk of the funds are obtained by local taxation." In States where education costs are borne more at the State level—where school finance reforms have attempted to equalize "educational opportunities" among wealthy and less wealthy districts—the Committee pointed out that the local portion of education funding is correspondingly low. This is so though equalization reforms are often "coupled with a determined effort to raise the level of education provided for all children."

Those schools in States with equalization plans and low local contributions have a lower LCR and hence a lower Impact Aid payment than they would have if equalization plans were not in place. The Committee observed that those districts have trouble meeting "the additional costs connected with the provision of education for [federally-connected] children."[443] As a result, "the children in the school district, both federally-connected and non-federally-connected, have been penalized... by a level of education which is less than that of comparable communities in the State."[444]

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[442] H.R. Rep. No. 703, 83d Cong., 1st Sess. 5 (1953).

[443] Id.

[444] Id.

Thus, in 1953, Public Law 874 was amended so that local educational agencies could, as an alternative to the comparable district method, use half the average per-pupil expenditures from all sources in the State. However, the amendment did not change the fact that the use of comparable districts acted as a substitute for individually determined local contribution rates and created substantial disparities.[445]

Clearly, the legislative rationale for the change reflects a concern for the educational needs of federally-connected pupils. Also, the Congress was allowing Federal compensation for part of the State contribution to the cost of educating a child. This is a departure from the original legislation, about which the House Report said, "There is no compensation for any loss in State revenues."[446] By these actions, the Congress

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445/ The law was amended to require only that "generally comparable" districts be selected for determining LCR. This change reveals the difficulties already faced in selecting comparable districts. No standard procedure has ever been adopted for the selection of comparable districts. Twelve guidelines were provided as criteria for selection. These were: 1) legal classification; 2) total number of pupils in ADA; 3) cost per pupil in ADA, paid from local source funds only, and paid from all source funds; 4) grade levels maintained; 5) percent of pupils transported; 6) pupil/teacher ratio; 7) assessed valuation per pupil in ADA; 8) ratio of assessed valuation to true valuation of property; 9) tax rate levied on real property for school purposes, for current expenses only, and for current expenses, debt service, and capital outlay; 10) curricula offered; 11) teacher salary schedule; and 12) economic characteristics, such as industrial, residential, or agricultural.

In using group rates, all local funds derived by local educational agencies in the groups are totaled and divided by their average daily attendance. The resulting rate becomes the local contribution rate for all eligible local educational agencies two years hence. By grouping districts together, substantial disparities in local contribution to schools between districts are averaged. Especially since the 1953 amendment to Public Law 874, districts no longer have to be "most nearly comparable" but only "generally comparable." The result of this procedure is that districts with low local contribution rates (relative to the group average) receive greater amounts for the Public Law 874 program, and districts with high LCR's receive lesser amount than they would under the original procedure. [Stanford Research Institute, 89th Cong., 1st Sess., Impacted Areas Legislation Report and Recommendations, Senate Subcommittee on Education of the Committee on Labor and Public Welfare 88-89, 90 (Comm. Print 1965).]

446/ H.R. Rep. No. 2287, 81st Cong., 2d Sess. 13 (1950).

displayed a concern for the "service burden" associated with the presence of federally-connected children in a school in addition to--if not to the exclusion of--the "revenue burden," a shift in emphasis in the theory of compensation.

The House Report stated that it --

> wishe[d] to make clear that the [amendment] has not and should not attempt to equalize rates between districts or between States. To do so would be to depart from the concept of [Impact Aid] as that of the Federal Government assuming its rightful share of a particular burden in a particular place. Education programs and costs vary from place to place in accordance with the traditional American philosophy of local control of education patterned to local desires and resources. This law is not designed to change or influence that tradition.[447]

The 1956 Amendment. In 1956, however, the Congress amended the LCR provision of Public Law 874 again to offer local educational agencies the opportunity to choose half the average per-pupil local contribution in the United States as their LCR for computing the amount of Impact Aid payment. This option was intended to be a "floor" or a minimum LCR which high State aid districts could choose. Recognizing that the half State average per-pupil expenditure LCR option "has been a great benefit to the federally-affected communities in those States where a substantial proportion of the educational costs...are borne from State funds," the Congress observed "a very large gap between the amounts received for each federally-connected child in States with high State aid systems and the amounts received in those States with very little State aid."

Both committees in the House and Senate noted:

> ...there are seven States that receive less than $90 for each child in the A category while on the other end of the scale there are eleven States where the average payment is more than $200 per child for each federally-connected child in the A category. The committee feels that, notwithstanding the fact that the Federal payments under section 3 are based on a loss of local tax revenue because of federally-owned property there is too great a disparity between the lower amounts paid in the high-State-aid States and the substantially higher amounts paid in the low-State-aid States.

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[447] H.R. Rep. No. 703, 83d Cong., 1st Sess. 6 (1953).

> The [House] Committee believes that the provision as it has operated in the past discriminates against high-State-aid States.[448]

Thus, in 1956, the Congress gave local educational agencies a third alternative for computing local contribution rate. This third alternative allowed Federal payment in consideration of an even greater portion of the State contribution than the alternative introduced in 1953 allowed. Like the 1953 amendment, the 1956 amendment was justified in legislative history on the ground that without the higher alternative LCR, some districts are "unable to meet the additional costs connected with the provision of education for [section 3] children...."[449] Again, the Congress departed from original concepts underlying Impact Aid--compensation for local revenue losses--by focusing on "service burden" and the educational needs of federally-connected children. As a consequence:

> The minimum rate of one-half the national average per pupil expenditures bears no relation to local education costs. In effect, it serves as a floor on payment rates. It addresses a concern which is really beyond the scope of the Impact Aid program--the problem of inter-State expenditures disparities.[450]

The logic underlying LCR as originally formulated is further contradicted by amendments since 1974 which allow awarding 125 percent of LCR for children residing on Indian lands and 150 percent of LCR for handicapped dependents of military personnel. Setting an entitlement at more than 100 percent of LCR belies the theory of compensating for a Federal burden as measured by local contribution which underlies the LCR concept. The special entitlement rates for children residing on Indian lands and for handicapped dependents of military personnel are based on a recognition of the high cost of educating children with special educational needs.

Because of these changes in computing the amount to which local educational agencies are entitled under Impact Aid, the comparable district method of computing LCR is used only by local educational agencies with higher per-pupil expenditures than the State average in States with higher per-pupil expenditures than the national average. Previous studies conducted by the Stanford Research Institute and the Battelle

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[448] H.R. Rep. No. 2357, 84th Cong., 2d Sess. 12 (1956).

[449] S. Rep. No. 2753, 84th Cong., 2d Sess. 11 (1956).

[450] Lawrence L. Brown, III, Alan L. Ginsburg & Martha Jacobs, Impact Aid Two Years Laters, An Assessment of the Program as Modified by the 1974 Education Amendments (1978).

Memorial Institute reached similar conclusions.[451]

In addition, reductions in payments caused by insufficient appropriations have resulted in a situation in which the LCR used to determine entitlement is reflected in payments only for local educational agencies receiving 100 percent of entitlement for "A" children--local educational agencies which are in highly unusual circumstances and for which the "comparable district" method of computing LCR has not been appropriate in recent years.

For these reasons the Commission believes that the entire concept of local contribution rate should be avoided and a method of determining the amount of compensation based upon principles consistent with those underlying the program should be devised.

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[451] The Stanford Research Institute found that --

> ...districts that elect to receive payment on the basis of comparable district LCR [on the average] have costs of education $89 higher than those paid at half the state or national average. Their local revenues per pupil are about $170 per pupil higher and their receipts from the state and federal government are $70 per pupil lower than the average for the others.**** It may be concluded that the ability to elect half the state or national costs of education tends to help low income and high state aid districts.

[Stanford Research Institute, 89th Cong., 1st Sess., Impacted Areas Legislation Report and Recommendations, Senate Subcommittee on Education of the Committee on Labor and Public Welfare 114 (Comm. Print 1965).]

The Battelle Memorial Institute substantiated the Stanford Research Institute's finding by describing that local educational agencies not choosing comparable district LCR usually have high State contributions or "generally low levels of per pupil expenditures...." Battelle agreed with the Stanford Research Institute that those States are usually in the South.

Battelle also observed that rates used to calculate Impact Aid entitlement "differ substantially among the various States." Thirteen Southern or border States--those combining high State aid and low per-pupil expenditures--"had districts claiming without exception the one-half national average local contribution rate of $225.78."

Ten States with average local contributions exceeding $400 relied on the comparable district method. [Lawrence L. Brown, III, Alan L. Ginsburg & Martha Jacobs, Impact Aid Two Years Later, An Assessment of the Program as Modified by the 1974 Education Amendments (1978).]

Burden is a combination of revenue lost because of Federal immunity from local taxation and expenditures made because federally-connected children attend public school. The cost of providing an adequate level of education for federally-connected children is part of the financial burden imposed by the Federal presence. Given the Federal obligation with respect to the education of federally-connected children and the expressed legislative concern with that level of education, it is reasonable that the cost of educating those children adequately should provide a benchmark for determining amount of compensation for the Federal presence.

Although improved analytical techniques in the fields of economics and school finance that could make a more precise formula for measuring burden and obligation under State law are being developed, they require a great deal of study and testing for their improvement and validation. At some point, the Commission hopes that these techniques can be perfected. The economic impact model has been developed as part of this effort.

The Commission believes that the principles in developing those techniques can be laid out and applied at this time in a general sense and used in a formula for determining entitlements. A local educational agency should be compensated on the basis of a consideration of the burden placed upon it by Federal activities, and, in determining the amount of that burden, the following should be taken into consideration:

(a) loss of revenue;

(b) cost of providing an adequate level of education;

(c) the fiscal benefit of Federal activities; and

(d) the obligation a landowner and user has, as such, under the school finance laws of the States.

The first of these factors, if it were a primary factor in determining the amount of compensation under any general formula, could be best implemented by congressional consent to local taxation of Federal property, thereby rendering, in most cases, the others unnecessary. Consent to local taxation has not been considered practical, and evidence before the Commission indicates that it would be both more expensive and less equitable than payments under current law in providing education for federally-connected children.

The latter two of these four factors are the subject of these improved analytical techniques and their effectuation must be delayed until such time as the techniques can be perfected. Therefore, it would appear that the simplest and most nearly equitable means of calculating the amount of compensation for a federally-affected local educational agency would be a method based upon the service burden suffered by that agency; that is, for the Federal Government to pay an appropriate percentage of the local share of the cost of providing an adequate level of education.

A formula for determining that amount must be based upon three definitions:

(1) What is the cost of providing an "adequate level of education"?

(2) What is the "local share" of that cost?

(3) What is the "appropriate percentage" of the local share of that cost?

In defining these terms, the Commission has sought a means of making judgments which are as nearly consistent with the basic theory of the Impact Aid Program as is possible. That theory is that Federal payments are for the purpose of enabling the States, through their local educational agencies, to carry out their historic responsibilities under a federal system, notwithstanding Federal burdens imposed upon those agencies. Within that theory is an additional principle that the amount of those payments should take into consideration the need to provide federally-connected children an adequate level of education, wherever they attend school.

On the basis of this theory the three definitions can be developed as follows:

1) Adequate Level of Education

Under the policy of Federal neutrality regarding the laws of the States, actions of the States respecting adequacy of the level of education they provide for children in attendance at the schools of their local educational agencies should be given weight, and a presumption should lie in favor of the decisions of the States regarding the expenditures necessary to provide that level of education--that is, the actual average per-pupil expenditure by the local educational agencies of the States.

From the policy of Federal neutrality a general rule can be drawn: an adequate level of education in the schools of a local educational agency should equal, with some exceptions, the average per-pupil expenditure of all the local educational agencies in the State in which its school district is located.

This rule can be based on the congressional policy first reflected in the 1953 amendments to Public Law 874 when one-half the State average per-pupil expenditure was authorized as an alternative LCR to the comparable district method of computing LCR.

Two exceptions to this rule are merited: (1) a consideration of the national average per-pupil expenditure as an alternative to the State average per-pupil expenditure; and (2) higher than average costs associated with the education of certain categories or classifications of federally-connected children.

(a) National Average Per-Pupil Expenditure. The expenditures in States having average per-pupil expenditures of less than the national average per-pupil expenditure may not be sufficient to provide federally-connected children with an adequate level of education. Wherever a federally-connected child goes to school, the Federal obligation follows. If, for Federal purposes, the parents of a child must reside in a school district of a local educational agency having low expenditures per child, should the education of that child be hampered by the fiscal capacity of that local educational agency? With this factor in mind, and carrying the Federal neutrality concept a little further, a minimum level of expenditures can be set for a determination of adequate level of education: the collective decisions of all the States, so that the national average per-pupil expenditure becomes that minimum.

(b) Adjustments to Average Per-Pupil Expenditure in the Cases of Some Federally-Connected Children. A number of factors affect the cost of education of federally-connected children which may make it appropriate to adjust the expenditure necessary to provide an adequate level of education upward from the State or national average per-pupil expenditure. Many federally-connected children have educational needs which, or whose circumstances, require greater than the average per-pupil expenditure appropriate for the affected local educational agency. Evidence before the Commission indicates that the educational needs of dependents of military personnel differ from those of children otherwise situated. The Congress itself recognized this fact when, in 1974, the LCR for handicapped dependents of such personnel was set at 150 percent of that which otherwise was calculated for a local educational agency.

Again, in 1978, the Congress recognized that there were additional costs associated with children residing on Indian lands by increasing the LCR for those children to 125 percent.

In addition, testimony was offered to support the argument that the costs of administration and adjusting instructional programs were extraordinary in local educational agencies with a high proportion or a large number of children from highly mobile military families in their classrooms.

For these reasons, the Commission believes that the law should provide for adjustments by administrative procedure. These adjustments would increase the amount of expenditures necessary to provide an adequate level of education for categories of federally-connected children, such as Indian children, military dependents, children in low-rent public housing, children in heavily impacted local educational agencies, and the costs involved in participating in the Impact Aid Program which are incurred at the local level.

2) Local Share of the Cost of an Adequate Level of Education

Present law requires that the local share of the cost of education be determined on the basis of local expenditures from local sources of revenue. Defining local expenditures from local revenues is difficult, especially with the changes in tax collection and dispersal methods used now. In some States, the State collects local taxes and then returns the revenues therefrom to localities. Are these State or local revenues? This situation is even more complicated in States which equalize real property tax revenues.

A simpler method of computing local share is to determine what the non-local share of the cost is and then deem the remainder to be local, so that the local share becomes that part of the cost of providing an adequate level of education for federally-connected children which is not paid by the State or by the Federal Government. The data on these sources are more readily available and tend to be more nearly uniform than those available regarding local sources of revenue.

In order to avoid misrepresentation of what this factor actually measures, the current term "local contribution rate" should be abandoned and the term "Federal contribution rate" be used as a more nearly accurate phrase.

The policy in favor of Federal neutrality with respect to State law requires a consideration of the question of increasing State contribution to local educational agencies. If the amount a State contributes to a local educational agency increases beyond 50 percent of the cost, the method described above would penalize that local educational agency in that its Impact Aid payment would be reduced. This would discourage State policies in favor of more State aid and be negative rather than neutral. Therefore, the Commission believes that a minimum Federal contribution rate should be set so that no local educational agency in any State should have a Federal contribution rate of less than 50 percent of the average per-pupil expenditure in that State.

3) The Appropriate Federal Percentage of the Local Share

A precise measurement of the local share of the cost of education for which the Federal Government has an obligation is difficult. Previous studies have attempted such a measurement, and, in 1974, the Congress adjusted the method of computing the amounts of entitlements under section 3 in a move toward greater precision.

The appropriate percentage of the local share determined under the original theory (which the data show to have continued validity) was one-half the local share for a child who either lives on, or lives with a parent employed on, Federal property and all of the local share for a child who both lives on, and lives with a parent employed on, Federal property.

The 1974 adjustment may have had a rationale insofar as it distinguished military dependents from dependents of civilian employees of the Federal Government, in that military personnel are, to a greater extent than civilian employees, less subject to State and local taxation. The distinctions regarding State and county boundaries between the location of the school and place of employment are, when considered in light of the trend toward emphasizing service burden, devoid of rationale: the cost of education does not vary when a child's parents cross the line between political entities to go to work. The political boundary distinction appears to have been an anachronistic resurrection of the out-dated revenue burden theory which influenced greatly the original program. If revenue burden is not a primary factor in determining compensation, then whether the Federal property is within the school district of the local educational agency is irrelevant.

Regarding the distinction between the children of military personnel and those of civilian employees, it is true that, because of the Soldiers and Sailors Relief Act, and the availability of retail stores on military installations, military personnel are not subject to many State and local taxes. However, these taxes are not generally the type which give rise to local revenues for local educational agencies. Children of military personnel do have special educational needs which may merit such a distinction, but the cost of meeting those needs are more properly met through adjustments in the determination of an adequate level of education for those children.

The various distinctions among the categories of federally-connected children have made application forms more difficult, have complicated the approval process, and have made the law and the program more complex than is necessary. These administrative difficulties outweigh any benefit to be achieved through the complex set of categories. For these reasons the Commission is recommending that the Federal percentage be 100 percent for children who both reside on, and reside with a parent employed on, Federal property and 50 percent for children who either reside on, or reside with a parent employed on, Federal property.

Exceptions. As is always the case when a general formula is drawn, there are exceptional circumstances which, when that formula is applied, result in inequities. Present methods of calculating burden fail to reflect actual per-pupil payment necessary to provide an adequate level of education.[452] In order to accomodate special circumstances, Public Law 874 has been amended many times to alter the method for computing the amounts of entitlements and the rates at which payments are made on those entitlements. This has resulted in a complex law under which all local educational agencies must operate--even though the complexities are the result of a minority of situations.

Rather than continue a complex law, which even in its complexity fails to achieve equity for local educational agencies in unique situations, the Commission believes that unusual cases ought to be treated individually in accordance with criteria reflecting the general philosophy and theory underlying the Impact Aid Program.

Even though a majority of local educational agencies with heavily impacted school districts may fall into the category of having such unusual circumstances as may require individual treatment, ease of administration for the remainder of the local educational agencies in the program would justify the extra administrative effort necessary for individual treatment of those with heavily impacted districts.

As late as November 1980, there were local educational agencies for which LCR's had not been determined for the school year 1979-1980, so that, because of the complexities of the payments system, no local educational agency in the Nation could determine, with precision, its payment for the previous school year--even then as the school year 1980-1981 began. Administrative appeals and judicial review of unusual situations might hold off final determinations of the amounts of payments for some time into the next year.

452/ Battelle observed that:

> The current methods of matching local contributions per pupil of comparable districts within the same State or State groupings of districts were found to do an inherently poor job of meeting net burden of Federal installations. By failing to reflect the actual State aid and local resources of the recipients, the comparable districts method will tend to overpay in some cases and underpay in others. Further, by tying contributions to activities in districts that do not receive substantial impact aid, these methods do not provide any automatic correction factor to offset a reduction in local tax effort resulting from overpayments of impact aid. [Battelle Memorial Institute, 91st Cong., 2d Sess., School Assistance in Federally Affected Areas: A Study of Public Laws 81-874 and 81-815, House Committee on Education and Labor 101 (1970).]

It is for these reasons that the Commission believes that the law should be made capable of handling payments to the great majority of local educational agencies, while those with unusual or difficult circumstances get just treatment through the administrative process. In line with the views of the Commission respecting heavily impacted local educational agencies as stated in section IV of this Chapter, the Commission believes that broad exceptions to this formula should be created and used for those agencies:

(1) An exception should be made for local educational agencies having school districts in which there is a substantial portion of Federal property. This exception should parallel the current section 2.

(2) Another exception, paralleling but expanding the current section 3(d)(2)(B), should be made for local educational agencies having a high percentage of federally-connected children in their schools.

The Commission is reluctant to suggest precise figures to govern these situations because any figure is arbitrary. The Commission, therefore, would suggest that the policies in current law be followed, with some room for flexibility. This, of course means that the Department would make judgments affecting the amount to which a local educational agency is entitled. Those judgments should be reviewable along lines similar to provisions in current law relating to administrative and judicial review.

Deductions. Finally, some local educational agencies receive payments in-lieu of taxes from other Federal agencies because of the tax-exempt status of Federal property. These payments appear to be compensation, in part, for some of the Federal burden. That being the case, the Commission believes that the amount of those payments should be used to reduce the amount of Impact Aid payments.

ATTACHMENT I: LEGISLATIVE HISTORY OF LOCAL CONTRIBUTION RATE PROVISIONS OF PUBLIC LAW 874

In computing the amount of entitlement to a local educational agency under Public Law 874, the Congress appears to have sought a formula for determining the amount of money which would have been spent on the education of federally-connected children from local sources if the local educational agency had been able to raise local revenues without regard for Federal activities or ownership of land.

As originally enacted, section 3(c) of Public Law 874 provided for determining the local contribution rate (LCR) for a local educational agency. Two procedures were required to reach the LCR for any local educational agency: (1) a determination of which school districts within a State were most nearly comparable (in the Commissioner's judgment) with that of an applicant local educational agency; and (2) a mathematical determination of the average per-pupil expenditures from local sources in those comparable districts.

Subsection (c) of section 3 is comprised of three sentences: the first directs the Commissioner of Education to determine comparable districts and determine average per-pupil expenditures; the second sets the LCR; and the third provides for an exception in the case of school districts for which there are no reasonably comparable school districts.

Comparable School Districts. Under the first sentence of subsection (c), the Commissioner is directed to determine, after consultation with the State educational agency of the State in which the applicant local educational agency is located, which school districts in that State are most nearly comparable with the school district of the applicant agency.

Determination of Amount of LCR. The LCR for any local educational agency for any fiscal year was to be determined under clause (2) in the first sentence of subsection (c) and the second sentence of subsection (c). The Commissioner was to determine two numbers: (1) aggregate current expenditures which local educational agencies of the comparable school districts made from revenues derived from local sources; and (2) aggregate number of children in average daily attendance for whom those local educational agencies provided a free public education. Each of these numbers was to be determined for the second year preceding that for which the computation was made. The LCR for an applicant local educational agency was to be equal to the quotient obtained by dividing aggregate current expenditures by aggregate number of children.

Exceptions. The third sentence of section 3(c) provided specially for determining LCR of local educational agencies which, because of unusual geographical factors, have no reasonably comparable school districts in the State in which they are located. If there were no such school districts and if unusual geographical factors affected the current expenditures necessary to maintain a level of education equivalent to that maintained in the comparable school districts, the Commissioner was authorized to increase the LCR for that local educational agency. The increase was to be equal to that necessary to compensate the agency for the increase in current expenditures caused by such unusual geographical factors. The original language reads:

> LOCAL CONTRIBUTION RATE
>
> (c) The local contribution rate for a local educational agency for any fiscal year shall be computed by the Commissioner of Education, after consultation with the State educational agency and the local educational agency, in the following manner:
>
> (1) he shall determine which school districts within the State are in his judgment most nearly comparable to the school district of the agency for which the computation is being made; and
>
> (2) he shall then divide (A) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which he is making the computation, which the local educational agencies of such comparable school districts made from revenues derived from local sources, by (B) the aggregate number of children in average daily attendance to whom such agencies provided free public education during such second preceding fiscal year.
>
> The local contribution rate shall be an amount equal to the quotient obtained under clause (2) of this subsection. If in the judgment of the Commissioner, the current expenditures in those school districts which he has selected under clause (1) are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain in the school district of the local educational agency for which the computation is being made, a level of education equivalent to that maintained in such other districts, the Commissioner may increase the local contribution rate for such agency by such amount as he determines will compensate such agency for the increase in current expenditures necessitated by such unusual geographical factors.

1953 Amendments (Public Law 83-248)

Section 2 of Public Law 83-248, enacted August 8, 1953, revised section 3 of Public Law 874 in its entirety. In so doing, the provisions setting out the means for determining the LCR of an agency were redesignated as subsection (d) of section 3 and three substantive changes affecting LCR were included: (1) special provisions were included for outlying areas, as defined within Public Law 83-248 (i.e., Alaska, Hawaii, Puerto Rico, Wake Island, and the Virgin Islands); (2) the language "generally comparable" was substituted for "most nearly comparable" in describing the school districts which were to be used in determining LCR for a local educational agency; and (3) provision was made for an alternative or minimum LCR for all local educational agencies.

Special Provisions for Outlying Areas. Alaska, Hawaii, Puerto Rico, Wake Island, and the Virgin Islands (hereinafter referred to as "the outlying areas") were given special consideration in determining LCR. The outlying areas were excluded from the applicability of the first three sentences of section 3(d) (as so redesignated). A new sentence was added to 3(d) which provided that the Commissioner would determine LCR for local educational agencies in the outlying areas in accordance with policies and principles best effectuating the purposes of Public Law 874 and most nearly approximating the policies and principles used for determining LCR for local educational agencies in the States.

Comparable School Districts. Under the original law, LCR for a local educational agency was determined on the basis of average per pupil current expenditures in school district "most nearly" comparable with that of the applicant agency. Section 2(b)(2) of Public Law 248 amended section 3(d)(1) of Public Law 874 by changing the term "most nearly" to "generally" so that the school districts used in determining LCR for a local educational agency were those that were "generally" comparable with the district of that agency.

Alternative or Minimum LCR. Section 2(c) of Public Law 83-248 added a new sentence to section 3(d) of Public Law 874. That provision set a minimum LCR in each State equal to half the average per-pupil current expenditure in a local educational agency's State. Minimum LCR for any local educational agency in any State was to be half of the quotient obtained by dividing (1) the aggregate current expenditures made by all local educational agencies in that State, regardless of the sources of the funds from which those expenditures are made, by (2) the aggregate number of children in average daily attendance for whom such agencies provide free public education.

1956 Amendments (Public Law 84-949)

Section 205 of Public Law 84-949 enacted August 3, 1956, amended section 3(d) of Public Law 874 by reinstating the original language regarding comparable districts (thereby reverting to "most nearly" comparable districts) and by rewriting the language relating to alternative or minimum LCR.

Comparable School Districts. Clause (1) of section 205 of Public Law 84-949 amended clause (1) of section 3(d) of Public Law 874 by striking out "generally comparable" and inserting in lieu thereof "most nearly comparable."

Alternative or Minimum LCR. The second clause of section 205 of Public Law 84-949 struck out the sentence added by section 2(c) of Public Law 83-248 (relating to half the State average per-pupil expenditure as a minimum LCR) and inserted in lieu thereof two new sentences which had the effect of adding a second alternative or minimum LCR.

The two new sentences added by clause (2) of section 205 were as follows: the first provided that there be two minimum levels considered for determining LCR; the second defined the terms used in describing these minimum levels.

Under the amended law, the LCR for a local educational agency in a State could not be less than either (1) half the average per-pupil expenditure in that State or (2) the national average per-pupil LCR. An exception provided that if the latter minimum is used, LCR cannot exceed 100 percent of the average per-pupil expenditure in that State.

Average per-pupil expenditure in a State continued to be computed as provided in the amendment made by Public Law 83-248.

The term "national average per-pupil LCR" was defined as (1) the aggregate amount to which all local educational agencies in the States were entitled for the second preceding year, as computed under section 3(c)(1) of Public Law 874, divided by (2) the aggregate number of children counted for computing the amounts of entitlements under that section. In determining the aggregate number of such children, half of those counted under section 3(b) of Public Law 874 were to be used.

1958 Amendments (Public Law 85-620)

Section 202(d) of Public Law 85-620 (enacted August 12, 1958) amended section 3(d) of Public Law 874 by changing again the description of "comparable district" and by changing the minimum relating to national average per-pupil LCR to one relating to national average per-pupil expenditure.

Comparable School Districts. The amendment made by clause (1) of section 201(d) of Public Law 85-620 struck out "most nearly" before "comparable school districts" and inserted in lieu thereof "generally."

Alternative or Minimum LCR. Clause (2) of section 201(d) of Public Law 85-620 struck out the two sentences added by Public Law 84-949 relating to alternative or minimum LCR and inserted in lieu thereof two new sentences, having the following effect:

(a) Whereas, the first of the two sentences provided that there would be two alternative or minimum LCRs--half the State average per-pupil expenditure and the national average per-pupil LCR--the new sentence provided that the two alternative or minimum LCRs would be half the State average per-pupil expenditure and half the national average per-pupil expenditure, except that an LCR based upon the national average per-pupil expenditure could not exceed 100 percent of the State average per-pupil expenditure. In addition, the new sentence contained a provision which had the effect of holding local educational agencies harmless from the changes for one fiscal year.

(b) Whereas, previously a second sentence defined "national average per-pupil LCR" the new second sentence defined "average per-pupil expenditure" in a State or the United States.

1966 Amendments (Public Law 89-750)

Section 201(b) of the Elementary and Secondary Education Amendments of 1966 (Public Law 89-750, enacted November 3, 1966) amended section 3(d) of Public Law 81-874 regarding the method of determining LCR.

Consultation. Under the previous law, the Commissioner of Education was required, prior to computing the LCR for any local educational agency, to consult with both that local educational agency and the State educational agency. As amended by section 201(b), the Commissioner was required to consult only with the State educational agency.

Comparable School Districts. Clause (1) of section 3(d) of Public Law 874 was amended to require that the Commissioner place each school district within each State into a group of generally comparable school districts. Clause (2) of section 3(d) was amended to provide that the computation of the amount of LCR be determined on the basis of the groups into which such school districts had been placed.

Per-Pupil Expenditure. The definition of average per-pupil expenditure was changed to include direct current expenditures by the State for the operation of schools within the State.

1968 Amendments (Public Law 90-247)

Section 206 of the Elementary and Secondary Education Amendments of 1967 (Public Law 90-247, enacted January 2, 1968) amended section 3(d) of Public Law 874 by striking out the changes made by Public Law 89-750 in 1966, thereby reverting to the law as it stood prior to the 1966 amendments.

1974 Amendments (Public Law 93-380)

Section 305 of the Education Amendments of 1974 (Public Law 93-380, enacted August 21, 1974) revised section 3 of Public Law 874 in its entirety. Even though no substantive changes were made regarding LCR, section 3(d) was reorganized so that the computation of LCR was governed by paragraph (3) of section 3(d) of Public Law 874. As reorganized, section 3(d) provided the general rule for computing the amount of entitlements in paragraph (1), the exception to that rule in paragraph (2), and the determination of LCR in paragraph (3).

The language of section 3(d) of Public Law 874 as it now reads follows:

Amount of Payments

3(d)(1) Except as is provided in paragraph (2), the amount to which a local educational agency shall be entitled under this section for any fiscal year shall be --

(A) in the case of any local educational agency with respect to which the number of children determined for such fiscal year under subsection (a) amounts to at least 20 per centum of the total number of children who were in average daily attendance at the schools of such agency during such fiscal year and for whom such agency provided free public education, an amount equal to 100 per centum of the local contribution rate multiplied by the number of children determined under such subsection plus the sum of the products obtained with respect to such agency under clauses (B)(iii), (B)(iv), (B)(v); and

(B) in any other case, an amount equal to the sum of --

(i) the product obtained by multiplying 100 per centum of the local contribution rate by the number of children determined with respect to such agency for such fiscal year under clause (2) of subsection (a),

(ii) the product obtained by multiplying 90 per centum of the local contribution rate by the number of children determined with respect to such agency for such fiscal year under clause (1) of subsection (a).

(iii) the product obtained by multiplying 50 per centum of the local contribution rate by the number of children determined with respect to such agency for such fiscal year under clause (3) of subsection (b),

(iv) the product obtained by multiplying 45 per centum of the local contribution rate by the number of children determined with respect to such agency for such fiscal year under clauses (1) and (2)(A) of subsection (b), and

(v) the product obtained by multiplying 40 per centum of the local contribution rate by the number of children determined with respect to such agency for such fiscal year under clause (2)(B) of subsection (b).

3(d)(2)(A) Repealed.

3(d)(2)(B) If the Commissioner determines that --

(i) the amount computed under paragraph (1), as is otherwise provided in this subsection with respect to any local educational agency for any fiscal year, together with the funds available to such agency from State and local sources and from other sections of this title, is less than the amount necessary to enable such agency to provide a level of education equivalent to that maintained in the school districts of the State which are generally comparable to the school district of such agency;

(ii) such agency is making a reasonable tax effort and exercising due diligence in availing itself of State and other financial assistance;

(iii) not less than 50 per centum of the total number of children who were in average daily attendance at the schools of such agency during such fiscal year and for whom such agency provided free public education were, during such fiscal year, determined under either subsection (a) or subsection (b), or both; and

(iv) the eligibility of such agency under State law for State aid with respect to free public education of children residing on Federal property, and the amount of such aid, are determined on a basis no less favorable to such agency than the basis used in determining the eligibility of local educational agencies for State aid, and the amount thereof, with respect to the free public education of other children in the State;

the Commissioner shall increase the amount computed under paragraph (1) with respect to such agency for such fiscal year to the extent necessary to enable such agency to provide a level of education equivalent to that maintained in such comparable school districts. The Commissioner shall not, under, the preceding sentence, increase the amount computed under paragraph (1) with respect to any local educational agency for any fiscal year to an amount which exceeds the product of --

(I) the amount the Commissioner determines to be the cost per pupil of providing a level of education maintained in such comparable school districts during such fiscal year, multiplied by -

(II) the number of children determined with respect to such agency for such year under either subsection (a) or subsection (b), or both, minus the amount of State aid which the Commissioner determines to be available with respect to such children for the fiscal year for which the computation is being made.

3(d)(2)(C)(i) The amount of the entitlement of any local educational agency under this section for any fiscal year with respect to handicapped children and children with specific learning disabilities for whom a determination is made under subsection (a)(2) or (b)(3) and for whom such local educational agency is providing a program designed to meet the special educational and related needs of such children shall be the amount determined under paragraph (1) with respect to such children for such fiscal year multiplied by 150 per centum.

(ii) For the purposes of division (i), programs designed to meet the special educational and related needs of such children shall be consistent with criteria established under division (iii).

(iii) The Commissioner shall by regulation establish criteria for assuring that programs (including preschool programs) provided by local educational agencies for children with respect to whom this subparagraph applies are of sufficient size, scope, and quality (taking into consideration the special educational needs of such children as to give reasonable promise of substantial progress toward meeting those needs, and in the implementation of such regulations the Commissioner shall consult with persons in charge of special education programs for handicapped children in the educational agency of the State in which such local educational agency is located.

(iv) For the purpose of this subparagraph the term "handicapped children" has the same meaning as specified in section 602(i) of the Education of the Handicapped Act and the term "children with specific learning disabilities" has the same meaning as specified in section 602(15) of such Act.

3(d)(2)(D) The amount of the entitlements of any local educational agency under this section for any fiscal year with respect to children who, while in attendance at such agency, resided on Indian lands, as described in clause (A) of section 403(1), shall be the amount determined under paragraph (1) with respect to such children for such fiscal year multiplied by 125 per centum.

3(d)(3)(A) Except as is provided in subparagraph (B), in order to compute the local contribution rate for a local educational agency for any fiscal year, the Commissioner, after consulting with the State educational agency of the State in which the local educational agency is located and with the local educational agency, shall determine which school districts within such State are generally comparable to the school district of the local educational agency for which the computation is being made. The local contribution rate for such agency shall be the quotient of -

(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made, which the local educational agencies of such comparable school districts derived from local sources,

divided by --

(ii) the aggregate number of children in average daily attendance for whom such agency provided free public education during such second preceding fiscal year.

3(d)(3)(B)(i) The local contribution rate for a local educational agency in any State shall not be less than --

(I) 50 per centum of the average per pupil expenditure in such State, or

(II) 50 per centum of such expenditures in all the States,

whichever is greater, except that clause (II) shall not operate in such a manner as to make the local contribution rate for any local educational agency in any State exceed an amount equal to the average per pupil expenditure in such State.

(ii) If the current expenditures in those school districts which the Commissioner has determined to be generally comparable to the school district of the local educational agency for which a computation is made under subparagraph (A) are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain, in the school district of such agency, a level of education equivalent to that maintained in such other school districts, the Commissioner is authorized to increase the local contribution rate for such agency by such an amount which he determines will compensate such agency for the increase in current expenditures necessitated by such unusual geographical factors.

(iii) The local contribution rate for any local educational agency in --

(I) Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands, or

(II) any State in which a substantial proportion of the land is in unorganized territory, or

(III) any State in which there is only one local educational agency shall be determined for any fiscal year by the Commissioner in accordance with policies and principles which will best achieve the purposes of this section and which are consistent with the policies and principles provided in this paragraph for determining local contribution rates in States where it is possible to determine generally comparable school districts.

3(d)(3)(C) For the purposes of this paragraph -

(i) the term "State" does not include Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands; and

(ii) the "average per pupil expenditure" in a State shall be (I) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made of all local educational agencies in the State, divided by (II) the aggregate number of children in average daily attendance for whom such agencies provide free public education during such second preceding fiscal year.

VIII. HOW SHOULD FUNDS BE ALLOCATED AMONG LOCAL EDUCATIONAL AGENCIES WHEN APPROPRIATIONS ARE INSUFFICIENT TO SATISFY ALL ENTITLEMENTS?

Prior to fiscal year 1969, the appropriations for making payments to local educational agencies under Public Law 874 were, with the exceptions of fiscal years 1965 and 1967, sufficient to satisfy fully the entitlements created under the law. That being the case, the provisions of section 5(c) of the law, which made allowance for the eventuality of insufficient appropriations, were of minor importance. Section 5(c) provided that, if appropriations were insufficient to satisfy fully all entitlements for any fiscal year, the amount paid on each entitlement that year was to be reduced in proportion to the amount of the insufficiency.

Since fiscal year 1969, appropriations have been consistently insufficient to satisfy entitlements. The insufficiencies were great enough that the ratable reduction language of section 5(c) became a major policy question.

In the case of local educational agencies for which Impact Aid payments were a relatively small percentage of their budgets, reductions did not cause major disruptions in their school operations. It was different for local educational agencies which were dependent upon Impact Aid payments. Heavily impacted school districts were threatened with serious disruptions--even school closings. These disruptions in school operations became a source of real concern.

Beginning in 1969, the Congress made special provision for heavily impacted school districts, which gave local educational agencies having an enrollment of at least 25 percent "A" children payments equal to their full entitlements. These local educational agencies were, as a consequence, recognized thereafter as a special category of school district and called, informally, "Super A's." Subsequent appropriations Acts, in recognition of the special needs of "Super A" districts, contained special language giving them full funding. In addition, those Acts provided that entitlements based on "A" children in other school districts would be paid at the rate of 90 percent and entitlements based on "B" children would be paid at lesser percentages, dependent upon the estimates as to how much of the "B" entitlements could be covered by the appropriation.

In 1974 section 5(c) of Public Law 874 was revised by initiating a new approach to making payments when appropriations are insufficient to satisfy all entitlements. The new approach was designed to set priorities for making payments among various types and degrees of Federal burden. This new approach required that payments be made in three steps or "tiers":

In Tier I, a uniform 25 percent of all entitlements were to be paid.

In Tier II, varying percentages of entitlements were to be paid, in addition to the amounts paid under Tier I. These percentages ranged from 75 percent in the case of "Super A" districts down to 28 percent in the case of entitlements based on "out-of-county" "B" children. Entitlements based on children from low-rent public housing were excluded from payments under Tier II. No payments could be made under Tier II unless all payments under Tier I were made, and no payments could be made under Tier II unless all payments were paid under Tier II.

In Tier III, any funds remaining were to be paid in partial satisfaction of unsatisfied entitlements in proportion to the extent that they were unsatisfied at the completion of payments under Tier II.

With the enactment of the Education Amendments of 1978 there was a reaction against the mandatory funding requirements in the tier system, and section 5(c) was amended to cause a 35 percent reduction in the amounts to be paid under Tier II and create a corresponding payment authority which would allow appropriations legislation flexibility in determining the amounts to be appropriated.

The Education Amendments of 1978 also created further distinctions in favor of "Super A" districts which lowered the eligibility for "Super A" status from 25 percent "A" children to 20 percent and provided for funding military "B" children entitlements in the same manner as such districts are funded for "A" children entitlements.

Subsequent appropriations Acts have further modified the effect of section 5(c) so that section 5(c) no longer controls the priorities in making Impact Aid payments, causing confusion, extremely difficult administrative problems, and delays in making payments.

The Commission recognizes that, notwithstanding the merits of the claim that local educational agencies have on the Federal Government for compensation for the burden placed on them by Federal activities, there are meritorious Federal activities which also have valid claims on the Federal treasury, all of which compete for limited financial resources in the budget-making and appropriations process. Decisions affecting the allocation of financial resources among those claims are political in nature and are made on the basis of many factors beyond the scope of the mandate given to this Commission. That mandate, however, does require that this Commission recommend to the Congress a method of allocating funds available for Impact Aid among local educational agencies, based on priorities within the program.

The Commission wishes to make clear that, in its assessment of the equity in the structure of the Impact Aid Program, every effort has been made to make an objective determination of the Federal burdens on local educational agencies, based upon legal and economic principles, and that the obligations which arise from those burdens are real and substantial.

Among local educational agencies the degree and type of burden varies considerably, but the burden is no less real for a lightly "impacted" school district than it is for a heavily "impacted" school district. They differ only in the degree to which failure to compensate for the burdens impairs the ability of local educational agencies to operate.

Appropriations ought to be sufficient to satisfy all entitlements, and it is only reluctantly that the Commission would consider recommendations which would have the effect of giving entitlements of some local educational agencies higher priority than those of others. The mandate of the Commission, being as it is, does require that it do so, and, therefore, the Commission has sought some rational principle upon which such a recommendation could be based.

Considering the legal and educational policies upon which the preceding recommendations are based, there are two which appear to be appropriate for forming the basis for a recommendation on priorities:

(1) The policy that Impact Aid is necessary under the federal system of government to preserve local educational agencies with such heavily impacted school districts that their ability to operate would be threatened without Impact Aid payments.

(2) The policy that the Federal Government has an obligation for the education of federally-connected children.

In the case of local educational agencies with heavily impacted school districts, the potentially destructive force of the power of the Federal Government is a reality. In many cases, the reality is that local educational agencies would be forced to close their schools or to curtail their operations so substantially that they would no longer be viable units of local government under State law.

The consequences of closures or curtailments would be that children for whom the Federal Government has an obligation would not receive an adequate level of education and there would be a failure of obligation, not only to the local educational agency under the federal system, but to the children.

The Commission believes that these principles provide sufficient guidance for determining at least which local educational agencies must be guaranteed payment of their full entitlement: those which, if they do not receive the full entitlement, can not provide an adequate level of education for federally-connected children.

Past practice in Public Law 874 has been to give preferential treatment to the so-called "Super A" districts--those which, under current law, have in attendance a number of children who both reside on, and reside with a parent employed on, Federal property (so-called "A" children) and who constitute at least 20 percent of the average daily attendance of their schools. On a national average a local educational agency with an enrollment of 20 percent "A" children would expect that the entitlements based upon that number would constitute approximately ten percent of its current expenditures. If all of that local educational agency's payment were eliminated, then certainly substantial disruption of its schools' operations would occur, yet it is difficult to determine the percentage of a local educational agency's current expenditures a reduction below which such a disruption would almost always occur. Any percentage of current expenditures would seem to be arbitrary and difficult to justify.

At the same time, using only the percentage of "A" children is inconsistent with the policy statement in the findings of this Commission that there is no qualitative difference between "A" children and "B" children—only a quantitative difference. Therefore, using only "A" children as a demarcation factor between heavily impacted and not-so-heavily impacted districts would appear to be inequitable to those local educational agencies having a high concentration of military dependents who are not "A" children. Two "B" children, by definition, equal one "A" child under the theory and policy adopted under the original law and under that which this Commission recommends be continued.

The actual question is which local educational agencies should have full entitlements paid and which, if circumstances require, should suffer pro rata reductions; or, stated another way, which local educational agencies could not endure a pro rata reduction to the extent recent appropriations levels would require if law had permitted such across-the-board reductions. The only guidance the Commission has is history: those which have suffered substantial reductions and survived; and, presumably, those which did not would not have been able to continue their level of operations.

It is on this basis that the Commission has come to the conclusion that, on the basis of precedent, the 20 percent "impaction" of "A" children be retained as a guideline for priority treatment, but that, if when "B" children are included, being counted as one-half a child each, the aggregate number of all federally-connected children constitutes at least 25 percent of the average daily attendance of a local educational agency, that agency should be given such treatment.

At this time, with a record of more than a decade of shortfalls in appropriations, it would appear that expansion of the program to include local educational agencies with less than three percent of their average daily membership being federally-connected and those with fewer than 400 federally-connected children is not equitable for those local educational agencies which have heretofore been eligible. For this reason the Commission recommends that these local educational agencies with extremely lightly impacted school districts be given the lowest priority in making payments.

Beyond the priority given heavily impacted districts and the low priority given to extremely lightly impacted districts, the Commission can find no principle which can be applied rationally to divide the entitlement of one local educational agency from that of another, and, if they must suffer reductions, then equity requires that they all receive similar treatment--pro rata reductions.

IX. SHOULD THE STATES TAKE IMPACT AID PAYMENTS INTO CONSIDERATION IN THEIR STATE AID PROGRAMS?

Under current law, no Impact Aid payments can be made to a local educational agency in a State which takes Impact Aid into consideration when determining the amount of State aid to which that agency is entitled. There is an exception to this general rule: if a State aid plan is designed to "equalize expenditures," then a local educational agency may receive Impact Aid even though the State considers those payments local sources.

As State programs of aid for education have developed over the years, their forms and purposes have varied. Some provided for simple per capita payments to local educational agencies. Others made payments to local educational agencies based on some consideration of the amounts of revenue raised from local property taxes. A number of State legislatures, in developing their distribution formulas, began to consider Impact Aid payments as local resources. This amounted to substituting Federal money for State money, diluting if not negating a benefit from Impact Aid.

In 1968, the Federal District Court for the Eastern District of Virginia ruled that Virginia could not consider Impact Aid payments to local educational agencies as anything but a supplement to funds already available for education in the State. Shepheard v. Godwin, 280 F. Supp. 869 (1968). In that case, Virginia taxpayers challenged the Virginia State aid program, under which the State reduced aid payments to federally-affected localities by the amount of Impact Aid received. They argued that the practice of the State violated the Fourteenth Amendment to the U.S. Constitution because it treated the children of Federal employees differently than it treated other students in the State. They also complained that the State deduction burdened them as taxpayers because deficiencies in the budgets of local educational agencies would have to be made up by increased tax levies.

The State supported its deduction of Impact Aid payments by arguing that those payments substitute for taxes and should be charged to localities as taxes are under the State aid formula. The State also argued that the State counts federally-connected pupils in computing part of State aid. For this reason, the State argued "it is not inequitable to insist upon a deduction of a commensurate amount of [Impact Aid] moneys."

In finding Virginia's program inconsistent with congressional intent in enacting Public Law 874, the court said the plan violated two policies of Impact Aid: (1) that Federal funds are exclusively for supplementation of local source revenues for school purposes and (2) that Impact Aid was not intended to lessen State efforts. For these reasons, the court concluded:

> ...the State formula wrenches from the impacted localities the very benefaction the act was intended to bestow. The State plan must fall as violative of the supremacy clause of the Constitution...

Allowing Virginia to deduct Impact Aid payments from the amount a locality should otherwise receive in State aid amounts to a "commandeering of credit for Federal moneys," the court wrote. This is Federal aid to States, which is inconsistent with the intent of Impact Aid. The court noted that the House Committee on Education and Labor, in recommending passage of Public Law 874 in 1950, observed that there should be no Federal compensation to the State for the Federal presence in a community. State revenues, the Committee noted, are not diminished by the Federal presence--Federal employees pay sales and income taxes as do other residents of the State.

In response to that, the Congress in 1968 amended Public Law 874, by adding section 5(d)(2), to require that a local educational agency can receive no Impact Aid payments if (1) the State in which the agency was located took Impact Aid payments into consideration in determining either the eligibility of an agency for State aid or the amount of State aid to which the agency is entitled, or (2) the State in which the agency was located awarded less State aid to an agency if it was eligible for Impact Aid payments than if it were not eligible.

Kansas adopted a program of State aid which purported to be an equalization program and which took Impact Aid payments into consideration. In order to avoid the penalty in this section 5(d)(2), members of the Congress representing Kansas and other States in similar situations succeeded in enacting an exemption for fiscal year 1973 from section 5(d)(2) for local educational agencies in States which adopted programs of State aid designed to equalize expenditures among local educational agencies.

This 1973 exception lasted only one year. It was enacted with the understanding that the equalization issue would be dealt with as a matter of long-range policy in the 1974 amendments to Public Law 874.

The policy of Impact Aid toward equalization is a matter of concern to States attempting to equalize expenditures among districts. Those States contend that Impact Aid payments can contribute to per-pupil expenditure disparities. If Impact Aid payments cannot be considered as part of the resources available to a district, those States argue, then equalization efforts will be defeated.

The 1974 amendments created a permanent exception to the 5(d) rule to provide that a State with what the Education Department considers a valid equalization plan can count Impact Aid payments as local resources in assessing local needs. To be valid, a State aid plan must be designed to "equalize expenditures" for education among all local educational agencies in the State. Also, the State may consider Impact Aid payments as local resources only in proportion to the share that local revenues covered under a State equalization plan make up of total local revenues.

The controversy respecting State treatment of Impact Aid payments stems from the States' view of their State aid programs and their view of what Impact Aid is.

So long as State aid programs to local educational agencies were based on assistance to the extent that there was a financial need, many States took Impact Aid payments into consideration as local resources in determining the need of local educational agencies for assistance. This amounted to substituting Federal funds for State funds in the State aid program and was found to be inconsistent with the intention of the Congress in Shepheard v. Godwin, supra.

The holding of the Court was ratified by statute by the Congress and the question appeared to be closed. However, the States' movement toward equalizing expenditures among local educational agencies raised a new issue: expenditures per child regardless of source or need by local educational agencies should be to some extent equalized.

The States contended that if Impact Aid payments were not taken into consideration in their State aid programs, those payments, when made in addition to the equalization provisions of State law, had a disequalizing effect and defeated the purpose of their plans. It was for this reason that the equalization exception was made in the statutory prohibition against taking Impact Aid payments into consideration in State Aid.

The regulations implementing the equalization exception were broad. Not only was a great disparity in expenditures among local educational agencies (25 percent) permitted, but the regulations permitted "power equalization" or "wealth neutrality" plans to qualify for the exception. Power equalization plans generally are designed to enable any local educational agency in the State to raise the same revenue for each mill of taxation, and do not even address the question of what is actually expended. Moreover, there is evidence that the Education Department, when it reviews power equalization plans, does not take into consideration expenditure or revenue ceilings placed on local educational agencies which may conflict with the equalization plan, so that what appears to be power equalization under one State law is not that at all when viewed in the light of other State laws.

It is the view of this Commission that the Department has been unduly lax in enforcing the prohibition in section 5(d)(1) (in cases such as Kansas, Maine, North Dakota, and possibly Rhode Island), and unduly generous to the States in approving their equalization plans (Michigan, for example). The 25 percent disparity permitted under the expenditure equalization regulation, on its face, is not equalized expenditures (especially when the highest and lowest expenditures are not included within the disparity limits). The "power equalization" regulation does not even address the issue of equalized expenditures and appears to have no basis in law.

The State treatment issue is entirely irrelevant when viewed on the basis of the theory and purpose of the Impact Aid Program. The Impact Aid Program is designed to pay a portion of the local share of the cost of education, as determined under State law. Under this theory the States should, under their own school financing laws, determine the State contribution to local educational agencies, thereby also determining the local share of the cost of education. It is to this local share that Impact Aid attaches.

The Commission recommends that the prohibition in current law against the States' taking Impact Aid payments into consideration in their State aid programs ought to be continued with modifications designed to prevent State actions having the same effect as taking those payments into consideration. Those modifications would prohibit --

(1) a State from requiring local educational agencies to spend Impact Aid funds for any purpose which the State would otherwise fund; and

(2) general purpose units of government from diverting Impact Aid funds from local educational agencies.

With regard for the exception to the prohibition in the case of a State's having an equalization plan, the Commission is recommending specific guidelines for determining when a State is equalized and the degree to which Impact Aid funds may be taken into consideration in equalized States.

First, the Commission recommends that State equalization plans actually have the effect of equalizing expenditures among local educational agencies. Current law only requires that State plans be designed to equalize. This has permitted power equalization plans to be approved even though there is no equalizing effect.

Second, the Commission recommends that the disparity in expenditures be no greater than ten percent. The 25 percent disparity now permitted results in States now qualifying with wide ranges of expenditures among local educational agencies.

Third, the Commission recommends that no more than two percent of the enrollment in a State be excluded in determining the highest expenditures in the State. This exclusion is necessary because there are local educational agencies which, because of unusual circumstances, have extraordinarily high per-pupil expenditures. The current regulations exclude the top five percent and the bottom five percent. The Commission can find no rationale for excluding local educational agencies with the least expenditures and has found that excluding five percent at the top permits disparities in expenditures which are inconsistent with the concept of equalization.

Fourth, the Commission recommends that no State qualify if the average per-pupil expenditure in the State is less than the national average per-pupil expenditure. This is necessary because the formula for determining the amount of compensation sets national average per-pupil expenditure as a minimum for an adequate level of education, and pays local educational agencies accordingly. If local educational agencies in a State are paid on the basis of a national average, and then that State takes those payments into consideration, that State would receive a benefit from having less than the national average. This would be inequitable.

Fifth, the Commission recommends that in no case should more than 50 percent of a local educational agency's payment be taken into consideration. The costs incurred by local educational agencies in providing education for federally-connected children--such as recordkeeping and providing for a highly mobile student body--are sufficiently higher than normal costs that even in an equalized State, special consideration should be given to them.

Sixth, the amounts of entitlements for local educational agencies with heavily impacted school districts are to be computed on an individual basis. In computing those amounts, the Department is expected to consider all of the resources available to those local educational agencies, including State aid. If the States were then able to deduct Impact Aid payments from State aid, the purpose of individually determined entitlements would be defeated. Therefore, the Commission recommends that, even in equalized States, payments to local educational agencies with heavily impacted school districts may not be taken into consideration.

CHAPTER IV

FINDINGS AND RECOMMENDATIONS OF THE COMMISSION

The Commission on the Review of the Federal Impact Aid Program, under its mandate given by the Congress, is required to review and evaluate the administration and operation of the program authorized by Public Law 874, Eighty-first Congress and report on that review and evaluation to the Congress. That report is to include such recommendations as the Commission deems appropriate.

THE COMMISSION, HAVING GATHERED EVIDENCE ON THE ADMINISTRATION AND OPERATION OF THE IMPACT AID PROGRAM, HAVING EVALUATED AND ASSESSED THAT EVIDENCE, AND HAVING MADE POLICY FINDINGS BASED ON THAT EVIDENCE, MAKES SUCH RECOMMENDATIONS AS DO FOLLOW IN THIS CHAPTER.

In carrying out its mandate, the Commission used, as an evaluative device, a historical approach. It assumes that the original law was good policy, based on valid principles; and, unless effectively challenged, those principles would be used as a policy guide in the evaluation. So, the inquiry began with the question: "what are the underlying premises upon which the program is based and what were the circumstances surrounding the adoption of those premises?"

This question was followed by a series of questions in such a manner that recommendations could be developed in a logical manner, based upon consistent policies, as follows:

(1) Is there a valid challenge to any of the principles accepted by the Congress in enacting the original law?

(2) Have circumstances changed so much that the original premises of the program are no longer valid?

(3) Do changed circumstances require changes in the program?

The Commission, as a research method, (1) conducted in-house research and (2) gathered evidence through the hearing process. The former was designed to inquire into questions not likely to be addressed in public hearings; and the latter was fashioned in such a manner as to obtain information not otherwise gathered and published, and to get a measure of public opinion.

The evidence was then arranged around the following nine questions:

(1) Should the Impact Aid Program be continued?

(2) Should there be basic changes in the Impact Aid Program?

(3) How should the term "Federal property" be defined?

(4) What is the obligation of the Federal Government with respect to the education of children connected with Federal property?

(5) Should local educational agencies educating children in attendance at public schools by reason of Federal law or activities be compensated therefor?

(6) Which local educational agencies should be eligible for Impact Aid payments?

(7) What should be the amount of compensation?

(8) How should funds be allocated among local educational agencies when appropriations are insufficient to satisfy all entitlements?

(9) Should the States take Impact Aid payments into consideration in their State aid programs?

I. SHOULD THE IMPACT AID PROGRAM BE CONTINUED?

A review of the evidence regarding the question of continuing the Impact Aid Program reveals that the program was originally authorized as a means of mitigating the adverse effects of Federal activities on the financial ability of local educational agencies to carry out their functions--to compensate them for the burden placed upon them by Federal immunity from State and local taxation and by educating federally-connected children. The program carries with it no Federal education policy. It is intended to preserve local control over education by compensating them for local revenues, without which those agencies would become more dependent upon the State and commensurately less subject to local control.

In general, the underlying philosophy of the major part of Public Law 874 is that the Federal Government, as a property owner and user, should, without regard for the tax-exempt status of that property, be treated in much the same manner as a private landowner and should pay to each local educational agency an amount for each federally-connected child which is roughly equivalent to the amount per child which private property owners in comparable communities pay toward the cost of educating children.

Federal activities impose two kinds of burden on local educational agencies: a revenue burden resulting from loss of revenue when the Federal Government owns real property, thereby exempting that property from State and local taxation or when Federal law or policies require that real property be so exempted; and a service burden resulting from the provision of educational services by local educational agencies for federally-connected children. Public Law 874, Eighty-first Congress, was enacted to compensate local educational agencies for these burdens.

Evidence against the Impact Aid Program was presented by the Education Department as follows:

(1) the Impact Aid Program overpays local educational agencies, in that entitlements are greater than the financial burden placed upon them by Federal activities;

(2) in most instances the economic benefits of Federal activities to localities compensate for the burden placed upon them by those activities;

(3) if those benefits are not available to local educational agencies, it is the result of ineffective State and local educational financing systems;

(4) the Government must take budgetary constraints into consideration and set priorities among education programs on the basis of those constraints; and

(5) other education programs have a higher priority with the Education Department than that given to Impact Aid.

The adequacy of the school finance laws, budgetary constraints, and priorities in funding among education programs are subjects not placed within the scope of the mandate given the Commission by the Congress. The Commission did, however, make policy findings regarding these issues as a means by which recommendations could be developed.

SHOULD THE COMMISSION MAKE RECOMMENDATIONS BASED UPON AN ASSUMPTION THAT THE STATES AND LOCALITIES SHOULD CHANGE THEIR LAWS IN ORDER TO TAKE ADVANTAGE OF THE ECONOMIC BENEFITS OF FEDERAL ACTIVITIES?

The Education Department has contended that Impact Aid entitlements are greater than the burden imposed by Federal activities, and that such activities actually create economic benefits that offset and compensate for any burden imposed within a locality. The Department contends further that if those benefits are not available to local educational agencies, it is the result of ineffective State and local educational financing systems. None of these contentions were borne out through the Commission's hearings and research.

The Commission made a major effort to determine the extent to which the economic benefits which may accrue from Federal activities are available to local educational agencies. Even though the original law authorizing the Impact Aid Program required that, under section 2 of that law, there be determinations about the fiscal benefits of Federal activities to local educational agencies, no means for making those determinations had been devised. In the case studies conducted by the Commission, the net fiscal burden is generally commensurate with the amounts to which the local educational agencies studied are entitled under section 3 of Public Law 874. In addition, the case studies showed that military installations contribute substantially more to State revenues than to local educational agency revenues.

In Bellevue School District, Bellevue, Nebraska, employees associated with Offut Air Force Base contributed about $6.3 million to the State in income and sales taxes but only about $1.0 million to the local educational agency in property taxes. In Douglas School District, Box Elder, South Dakota, employees related to Ellsworth Air Force Base paid about $1.6 million in sales taxes to the State (South Dakota has no income tax) but just $0.1 million in property taxes to the local educational agency. And in Chambersburg Area School District, Chambersburg, Pennsylvania, employees associated with Letterkenny Army Depot contributed about $5.0 million to the State in income and sales taxes, but only about $1.2 million in property taxes.

Districts apparently fail to capture the benefits that States succeed in accruing for at least six reasons:

(1) Many base employees live on base and are not subject to property taxes;

(2) Many base employees living off base live outside the district;

(3) Military employees frequently shop on base, denying maximum commercial development to the school district;

(4) Off-base shopping is frequently done outside the district, further retarding commercial development;

(5) Base purchases may be made within the State but outside the district; and

(6) State taxes constitute a higher percentage of personal income than do local property taxes.

Assuming that the Federal Government should be treated, to the extent practicable, as a private landowner under the school finance laws of the States, what relationship is there between economic benefits conferred by the ownership and use of the land and the objection to pay real property taxes on that land? Private industry is generally considered as having a positive economic benefit on the community in which it is located, yet among the benefits it confers is the tax it pays on the property it uses. Zoning laws and commercial property taxes are, in large part, designed to regulate and capture the benefit of taxes on productive property. To be sure, some communities give, subject to State law, limited tax preferences to industries in order to get them to locate in their areas, but these preferences are generally limited in time and are not in the form of tax-exemption altogether.

Even if there were a net economic benefit conferred by Federal activities on a local educational agency and if that benefit were to be a factor in determining compensation for the burden imposed by those activities, it should be taken into consideration in determining the amount of compensation through the process of setting priorities rather than as a substitute for any obligation as a landowner.

Moreover, Public Law 874 was designed to operate under the laws of the States regarding the financing and governance of local educational agencies. The law was based on an assumption that most local educational agencies derived the revenues for the local share of the cost of education from real property taxes, approximately half of which came from taxation of residential property and half from taxation of nonresidential property.

The manner in which the States finance public education is solely within the prerogatives of the States, under the Constitution, so long as the laws of the States affecting the financing of public education do not operate to the disadvantage of persons subject to a suspect classification or interfere with the exercise of fundamental rights and liberties and so long as those laws bear a rational relationship to the legitimate State purposes of financing public education. San Antonio Independent School District et al. v. Rodriguez et al., 411 U.S. 1 (1973).

It would be difficult to contend that the Congress could legislate directly to determine how the States finance their schools or the relationship between the States and their subdivisions--local educational agencies.

Failure to continue the Impact Aid Program because of a belief that the States should change their laws to take advantage of the economic benefits conferred by Federal activities would be doing indirectly what the Congress could not do directly. Modification of the program based on an assumption that the States would change their laws to accomplish that purpose is, in effect, placing duress on the States.

Therefore, regarding the question of whether the Commission should make recommendations based upon an assumption that the States and localities should change their laws in order to take advantage of the economic benefits of Federal activities, the Commission found --

(1) that, if there are net economic benefits to the affected localities, the revenues from those benefits are, except in the case of taxes on the net increase in property values caused by Federal activities, primarily in the form of income and sales taxes imposed and used by State government and local units of general government, rather than by local educational agencies;

(2) that those revenues can only become available to local educational agencies through substantial changes in State laws which would affect fiscal independence of, and control over, those agencies;

(3) that Federal policy should be neutral with respect to the relationship between the States and their subdivisions and with respect to fiscal independence of local educational agencies;

(4) that the policy in favor of treating the Federal Government, to the extent practicable, as a private landowner, under the school finance laws of the States, is sound and should be continued;

(5) that the economic benefits private land owners confer on localities do not relieve those land owners of their responsibility for real property taxes, although some local governments do give limited tax relief to owners of some commercial property in consideration of the economic benefit derived from the use of that property; and

(6) that increases in revenues from income and sales taxes resulting from Federal activities are not a relevant consideration when determining the degree of burden placed upon a local educational agency by Federal ownership and use of real property but may be relevant in computing the amount of compensation for that burden to that agency when it is determined that those revenues are a fiscal benefit to that agency.

Even though these findings did not directly form the basis of any recommendations, they were policies which provided the guidelines for all of the recommendations. The Commission makes no recommendations based on an assumption that the States should change their laws respecting the means by which local educational agencies are financed.

SHOULD BUDGETARY CONSIDERATIONS BE [illegible] FACTOR IN DETERMINING THE EXISTENCE OR MAGNITUDE OF FEDERAL BURDEN?

Testimony before and research of the Commission overwhelmingly support the retention of the program and expansion of funding levels. The evidence before the Commission which would support major reductions in the Impact Aid Program is based on a contention that the Federal Government must reduce expenditures generally and that among Federal priorities Impact Aid is of less importance than other items in the Federal budget. This contention does not address the merits of the program on its own terms but rather the relative merits of the program when measured against other Federal funding priorities. Furthermore, priorities among education programs cannot be assessed without a study of all education programs, which study was beyond the mandate given the Commission by the Congress.

The Commission found --

(1) that budgetary considerations are political questions which change from year to year, based on many factors beyond the scope of this review and evaluation of the Impact Aid Program;

(2) that the degree to which Federal activities constitute a burden on local educational agencies is relatively constant over the years and can be determined based upon factors within the scope of this review and evaluation;

(3) that budgetary considerations are not relevant to determining the magnitude of burden placed upon local educational agencies;

(4) that budgetary considerations should [illegible] be a factor in determining the level of appropriations for the Impact Aid Program unless there is a general policy in favor of reducing expenditures by the Federal Government and, when there is a determination of the level of appropriations under such circumstances, the Government's obligation to local educational agencies should be a primary factor and this program should receive a high priority level;

(5) that budgetary considerations, if they are to be a factor in the amounts paid to local educational agencies, should bear on determining the overall levels of appropriations for the program; and

(6) that, if those levels of appropriations are insufficient to compensate local educational agencies for the burdens placed upon them, the funds appropriated for the program should be allocated within the program on the basis of priorities which take into consideration the magnitude and the nature of such burdens.

These findings were adopted as a matter of policy in determining the manner in which evidence was to be weighed, and have no recommendations based upon them.

The Commission examined intensively the underlying premises upon which the program is based. Although circumstances have changed in the 30 years since the enaction of Public Law 874, those circumstances have not changed so greatly as to warrant substantial revisions of the program as it relates to public school financing.

There have been significant changes in State laws regarding school finance, with a trend toward a greater share of the cost of education and less reliance upon real property taxes for the support of education. The State share of education revenues should continue to increase, though how much depends on the effect of State taxation and expenditure controls. Localities have contributed a smaller share of education revenues since 1950 and have relied somewhat less on the property tax to raise revenues; yet the residential and commercial property tax base still remains important. These changes, however, have not been so substantial as to change greatly the patterns of school finance into which Impact Aid was designed to fit, or as to merit substantial alteration of the program as it relates to the financing of public schools. The Federal Government still owns millions of acres of land and its laws and policies require that still more land be exempt from State and local taxation. Children who reside on that land and whose parents are employed thereon are in attendance at the schools of thousands of local educational agencies, the great majority of which agencies still rely substantially upon real property taxes for the revenues necessary to support the operation of those schools.

Regarding Federal immunity from State and local taxation under the Supremacy Clause of the Constitution, the law has been reviewed and even though finer distinctions have been drawn allowing more taxation of private interests in Federal property, the doctrine of immunity still stands and deprives local educational agencies of revenues. A factor in limiting the broad coverage of that doctrine has been a recognition, on the part of the courts, that Federal immunity must be balanced against the need of local governments for revenues. Even though there is a considerable body of opinion that such balancing should be carried out through the political branches of the Government, the Supreme Court has recently decided that it can limit the power of the Federal Government when the federal system of government is threatened by the exercise of otherwise valid powers of the National Government.

One trend which the original Impact Aid Program did not anticipate was the move toward equalization of expenditures within a State. There is a body of opinion that if there is equalization of expenditures among local educational agencies within the State, the need for Impact Aid payments would be limited to those local educational agencies having a high percentage of federally-connected children in attendance at their schools--especially if equalization were the case among the States--and that the Congress should exercise its spending power to encourage equalization--even to the point that, as an inducement, the State themselves (rather than their local educational agencies) would receive Impact Aid payments if they equalize. This approach is considered impractical at this time but merits consideration when the apparent trend in favor of equalization so restructures school finance patterns as to alter the basic premises for the Impact Aid Program.

One other significant trend since the enaction of Public Law 874 was the increase of refugees and undocumented aliens entering the United States, especially in the 1970's and early 1980's. There is good reason to broaden coverage under Impact Aid for these groups because their presence is the direct result of Federal policy, warranting assistance under Impact Aid.

The relatively unchanged circumstances since the time Public Law 874 was enacted show that the underlying premises upon which the program was based have continued legitimacy. In order to integrate several new concepts added to Public Law 874 through amendments, however, the means for determining the of amount of compensation requires revision. In addition, exceptions to the formula determining amount of compensation should be broadened to accommodate those districts most heavily impacted.

Overview. The original premises upon which the program was based were examined to determine if they had continuing validity:

(1) that Federal immunity from State and local taxation deprives local educational agencies of necessary revenues;

(2) that, under the laws of the States, the owners and users of real property have an obligation to support public education; and

(3) that the Federal Government should assist local educational agencies in providing education for federally-connected children.

Although circumstances have changed somewhat since the enaction of Public Law 874, the original premises upon which the program was based continue to exist, and it is mainly the determination of the amount of compensation that requires substantial revision to reflect current education needs.

The effect of Federal activities on the ability of a great number of local educational agencies to finance the operation of their schools is so substantial that, without payments from the Federal Government to mitigate that effect, their continued existence as viable units of local government, as subdivisions of the States, is threatened. Such a threat is evidence that a potential for destruction of local government under the laws of the States is inherent in the power of the Federal Government to acquire, and thereby exempt from taxation, real property.

Even though the acquisition and use of real property is undoubtedly within the necessary and proper powers of the Congress, the exercise of that power could be destructive of the federal system of government under the Constitution.

The implied power in the authority to "make all laws which shall be necessary and proper for carrying" out the powers given to Congress under section 8 of Article I of the Constitution is certainly no stronger than the expressed power given under the Commerce Clause in that section, upon which the Supreme Court has found a limitation. The Congress may not exercise its power so as to force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made. If that power is not checked the Federal Government could "devour the essentials of State sovereignty." National League of Cities v. Usery, 426 U.S. 833, at 855 (1976).

Public education has traditionally been a function of the States and the States have delegated that function, to a great extent, to subdivisions thereof--local educational agencies. So long as education remains a function of the States in our system, the means by which that function is financed is an essential State function--an element of the sovereignty of the States guaranteed in a federal system of government.

The Federal power to exempt from taxation is the power to destroy a unit of government dependent upon taxation. The power of the Federal Government to "acquire and use" real property is also the power to destroy local educational agencies dependent upon taxation of that property. Therefore, it would appear that when the Federal Government owns, or otherwise exempts, real property from taxation, it has an obligation to mitigate the adverse effects thereof. The Impact Aid Program is one means of mitigating those effects.

The Federal Government has a long-standing interest in the education of federally-connected children and has, over the years, recognized an obligation for their education. On the basis of that interest and obligation, the Federal Government should assist local governments which provide education for those children, in that the cost of their education constitutes a burden on those local educational agencies.

Evidence before the Commission indicates that the elimination of, or a substantial reduction in funds for, the Impact Aid Program would cause serious educational problems in almost all local educational agencies now participating in the program. In the cases of approximately 300 local educational agencies, reductions in funding would cause school closings. An additional 200 to 300 local educational agencies would suffer severe disruptions in their operations if Impact Aid payments are eliminated.

From this evidence the Commission has concluded that under the federal system of government, there is an obligation on the part of the Federal Government to mitigate the adverse effects of Federal activities on local educational agencies and that, even though other means of doing so may be possible, a program similar to that authorized by Public Law 874 is necessary.

The Commission examined all of the preceding issues, following the policy guidelines set forth by the findings regarding State laws and budgetary considerations, and found --

> (1) that, under a federal system of government, there are constitutional reasons for its continuation in that it is one means by which the Congress may mitigate the adverse effects upon the States and their local educational agencies which result from the exercise of the power of the Federal Government, thereby limiting the potential for conflict between the necessary and proper exercise of power by the Federal Government and the right of the States and their subdivisions to exist, which conflict could arise as a natural consequence of the division of sovereignty made by the Constitution with a federal system of government;
>
> (2) that, even though there are changed circumstances which affect the underlying premises of the program, those premises have validity at this time and will continue to have validity so long as taxation of real property forms the basis of support for the operation of public schools, or so long as Federal activities impose a burden on those schools;
>
> (3) that, since 1950, approximately half of the real property tax required to meet the local share of the cost of educating a child is derived from taxation of residential property and half from taxation of commercial or other real property; thus payments should be made by the Federal Government to local educational agencies on the basis of the use of Federal property both as a place of employment and as a place of residence and those payments should be computed to provide all of the local cost of educating a child who both resides on Federal property and resides with a parent employed on Federal property and half of that cost for a child who either resides on Federal property or resides with a parent employed on Federal property;

(4) that there is no substantial evidence before this Commission at this time which supports the contention that there are net economic benefits to local educational agencies arising from Federal activities which mitigate the burden imposed upon those agencies by those activities; and

(5) that, because of amendments adopted since 1950, changed circumstances, more nearly complete information, and improved analytical techniques, refinements of the program are possible and should be undertaken.

On the basis of these findings, the Commission recommends --

THAT THE IMPACT AID PROGRAM AUTHORIZED BY PUBLIC LAW 874, EIGHTY-FIRST CONGRESS, BE CONTINUED.

II. SHOULD THERE BE BASIC CHANGES IN THE IMPACT AID PROGRAM?

During the thirty years since the Impact Aid Program was first authorized, circumstances have changed which require modifications and refinements in the program. Most significant of these are (1) the implicit development within the Public Law 874 concept of providing an adequate level of education for federally-connected children, and (2) the development of analytical techniques in the field of economics which make possible the measurement of the burden placed upon local educational agencies by Federal activities. With respect to these issues recommendations are made.

A. ADEQUATE LEVEL OF EDUCATION

Shortly after Public Law 874 was enacted, the Congress amended the law by increasing the amounts to which local educational agencies were entitled. The legislative history of these amendments indicates a concern for the adequacy of the level of education for federally-connected children and a sense of obligation to provide that level. Even though there is no explicit statement in the law expressing the concept of adequate level of education, the effect of the amendments was to increase payments for local educational agencies having per-pupil expenditures less than the average of the States in which they are located or less than the national average of such expenditures.

This was especially the case when local contribution rates were set in excess of 100 percent with respect to certain federally-connected children for whom the cost of education was obviously greater than the average: for handicapped military dependents the rate was set, in 1974, at 150 percent of the normal local contribution rate; and for children residing on Indian lands the rate was set, in 1978, at 125 percent thereof.

In addition, a review of the history of Federal policy regarding the education of military dependents and Indian children reveals a longstanding policy in favor of providing, as a matter of obligation, an adequate level of education for them.

The unstated policy in favor of an obligation to provide an adequate level of education for federally-connected children has been effected by unduly complicated legislative language in the law. An open expression of that policy could make possible a simplification of the statute and the formula for determining the amounts to which local educational agencies are entitled.

B. DETERMINATION OF THE NET FISCAL BURDEN PLACED UPON LOCAL EDUCATIONAL AGENCIES BY FEDERAL ACTIVITIES

When Public Law 874 was first enacted, the Congress acted upon an assumption that there was a net fiscal burden placed upon local educational agencies by Federal activities. No measurement of that burden was required except in the case of payments made under section 2 of the law. Instead, the law provided for compensating local educational agencies for the Federal burden by the use of a "local contribution rate" which was designed originally to make a payment for each federally-connected child. This payment was roughly equivalent to the amount contributed per child by private property owners in comparable communities.

Since 1950, however, analytical techniques in the field of economics have improved and better data concerning Federal activities have become available. Improved techniques and better data make possible an examination of the basic assumptions about Federal burden.

In order to test these basic assumptions, evidence concerning analytical techniques in the field of economics was sought and the availability of data concerning Federal activities was examined in order to determine the feasibility of conducting an economic impact study. During the course of gathering this information, it was discovered that the National Planning Association had proposed a contract to the Office of Education to conduct an economic impact study. The Office of Education chose not to fund the contract. The proposal did contain a description of two models for examining the fiscal effects of Federal activities on localities: one was a case study model and the other used an aggregate method for local educational agencies in general. On the basis of the concepts underlying the case study model, the Commission developed a model specifically designed to determine the effect of Federal activities on the finances of local educational agencies.

Even though the Commission completed only four case studies and the evidence is far from conclusive with respect to all Federal activities, these studies do not support the assumption made by the Education Department that there are net economic benefits to localities from Federal activities. The results certainly indicate that policies ought not be made on the basis of that assumption.

All four of the case studies resulted in a determination that there is a net economic burden on local educational agencies which results from Federal activities. In three of the four cases the Federal burden was almost the same as the Impact Aid entitlement for 1979. In the fourth case the entitlement was greater than the burden, primarily because State aid to the local educational agency compensated for part of the Federal burden.

The model developed by the Commission needs further testing and should be adapted so that the effects of other Federal activities on local educational agencies can be determined. Should the concepts used in the case study method prove to be valid indicators of Federal burden, an aggregate study model could be developed.

These instruments would provide empirical evidence about the burdens and benefits of Federal activities--making unsupported assumptions, inappropriate in policy making, unnecessary.

The Commission found --

(1) that there is an obligation of the Federal Government which arises from both revenue burdens and service burdens placed upon local educational agencies;

(2) that the degree to which that obligation requires compensation by the Federal Government should be based on consideration of the burden placed on local units of government and the cost of providing an adequate level of education for federally-connected children; and

(3) that, in determining the amount of compensation to local educational agencies for that burden, the net economic benefit conferred by Federal activities on local educational agencies may be taken into consideration.

On the basis of these findings, the Commission recommends --

A. ADEQUATE LEVEL OF EDUCATION FOR FEDERALLY-CONNECTED CHILDREN

(1) THAT PUBLIC LAW 874, EIGHTY-FIRST CONGRESS, BE MODIFIED TO STATE THAT THE FEDERAL GOVERNMENT HAS AN OBLIGATION WITH RESPECT TO THE EDUCATION OF FEDERALLY-CONNECTED CHILDREN; AND

(2) THAT THE OBLIGATION OF THE FEDERAL GOVERNMENT WITH RESPECT TO THE EDUCATION OF FEDERALLY-CONNECTED CHILDREN BE TAKEN INTO CONSIDERATION IN DETERMINING THE AMOUNTS TO WHICH LOCAL EDUCATIONAL AGENCIES ARE ENTITLED UNDER PUBLIC LAW 874 BY USING AN ADEQUATE LEVEL OF EDUCATION AS A STANDARD.[453]

B. DETERMINATION OF THE NET FISCAL BURDEN PLACED UPON LOCAL EDUCATIONAL AGENCIES BY FEDERAL ACTIVITIES

(1) THAT THE EDUCATION DEPARTMENT DEVELOP AND USE A MEANS TO DETERMINE, ON AN OBJECTIVE BASIS, THE NET FISCAL BURDEN PLACED UPON LOCAL EDUCATIONAL AGENCIES BY FEDERAL ACTIVITIES; AND

(2) THAT PUBLIC LAW 874 BE MODIFIED SO THAT THE AMOUNTS TO WHICH LOCAL EDUCATIONAL AGENCIES ARE ENTITLED CAN BE ADJUSTED IN CASES WHERE THE NET FISCAL BURDEN PLACED UPON LOCAL EDUCATIONAL AGENCIES VARIES SUBSTANTIALLY FROM THAT TO WHICH THOSE LOCAL EDUCATIONAL AGENCIES WOULD OTHERWISE BE ENTITLED UNDER THAT LAW.

III. HOW SHOULD THE TERM "FEDERAL PROPERTY" BE DEFINED?

The general principle underlying the major part of Impact Aid is that the existence of real property which is not subject to State and local taxation in the school district of a local educational agency entitles that agency to payments to offset property tax revenues lost.[454] Thus, it is the tax-exempt status of land which governs its inclusion in the definition of Federal property. The underlying principle in the definition is based on Federal immunity from State taxation under the Supremacy Clause of the Constitution. Under this principle, the definition of Federal property should include all tax-exempt real property, which is exempt by reason of Federal law.

The statute has since 1950 defined "Federal property" generally as that property which is owned or leased by the United States and is not subject to State or local taxation. From the beginning of the program, the definition has included exceptions or clarifications such as "Indian lands," defined as real property which is either held in trust by the United States for individual Indians or Indian tribes, or held by individual Indians or Indian tribes and is subject to restrictions upon alienation imposed by the Federal Government.

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[453] For the purposes of this recommendation, the amount necessary to provide an adequate level of education is defined as "the greater of the State average per-pupil expenditure or the national average per-pupil expenditure."

[454] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 2, 7, 27 (1950).

When determining whether a class of property should be included within the definition, the issue is: does the property in question constitute a revenue burden? Is real property being removed from the tax rolls and are children residing on that property, or are children whose parents are employed on that property in attendance at the schools of a local educational agency? If so, is the tax exemption the result of Federal law? When these tests are applied to the definition in current law, with a few exceptions, that definition meets those tests.

It is the exceptions which cause problems. They tend to be vestiges of policies intended to limit the size of the program, of single purpose amendments to accommodate particular pieces of property, of judgments as to whether a class of property constitutes a benefit to the community, and of policies to ease administrative functions. These exceptions are not only inconsistent with the purpose of the definition--to lay the basis for determining whether a revenue burden or service burden exists --but cause the definition to be complex and confusing.

The Commission has had a policy in favor of simplification of the law and, to the extent practicable, simplification of concepts. In order to accomplish this it has been necessary to treat unusual or exceptional situations individually and determine whether consistency with overall policies is possible; and if it is not, whether the desired result merits an exception.

The Commission found --

(1) that that definition continues to serve well as a basis upon which the Impact Aid Program is structured and ought to continue as such;

(2) that the underlying policy for the definition should be based upon whether the property in question is subject to State and local taxation and, if it is not, whether its exemption from such taxation is the result of Federal ownership or Federal law;

(3) that all real property which is so exempt should be within the definition of "Federal property" and all property which is not so exempt should, unless there are sufficient reasons to the contrary, be excluded;

(4) that Federal property should, to the extent practicable, be treated like private property; and

(5) that the extent to which a class of property is used for the benefit of the locality in which it is located should not be taken into consideration in the definition, but may be taken into consideration in determining the amount of compensation for which payment is made to a local educational agency.

On the basis of these findings, the Commission recommends --

THAT THE TERM "FEDERAL PROPERTY" BE DEFINED AS ANY REAL PROPERTY IN ANY STATE WHICH IS NOT SUBJECT TO TAXATION BY THAT STATE OR ANY POLITICAL SUBDIVISION THEREOF BY REASON OF FEDERAL LAW.

This definition is consistent with the underlying constitutional reasons for the existence of the Impact Aid Program. Consistency in policy has been a major guideline used by the Commission in developing recommendations. In the case of the definition of "Federal Property" the constitutional nexus is Federal-State relations under the Supremacy Clause. The term "State" in the recommendations should be taken literally, as the fifty States.

Such a definition necessarily excludes entities which are not States and which are ultimately under complete control of the Congress, such as the District of Columbia and the outlying areas such as Wake Island, Puerto Rico, and Guam. The Congress has the authority to deal directly with the schools in those entities and has the responsibility to do so. These areas ought not be treated as States unless they are States with constitutional protection as such.

For this reason, the definition should exclude Federal property in any area which is not a State. The Commission does feel, however, that the needs of the non-State entities should be taken care of by the Congress through direct legislation designed to meet the particular needs of each of them.

As a corollary with the principle of tying the definition of Federal property to the tax-exempt status of real property by reason of Federal law under the intergovernmental tax immunities theory, and with the strict definition of the term "State," the use of the word "any" should be construed literally with the effect that a child connected with Federal property in any State should be counted in whatever State that child attends public schools.

If the amount of compensation were computed strictly on "revenue burden" --which is not the case, nor would be the case under the recommendations --then there would be reason for excluding children connected with property in a State other than that in which the child attends school. However, both current law and the recommendations base the determination of the amount of compensation on "service burden"--the cost of providing education--in which case, the burden is where the child goes to school rather than where the property is located.

Furthermore, the Commission is recommending that the law expressly recognize what current law implies--that the Federal Government has an obligation with respect to the education of federally-connected children. Any distinction among those children based upon State lines would be inconsistent with an obligation to those children.

Even though low-rent public housing property is not expressly mentioned in the recommendation, it is clearly included because that property is exempted from State and local taxation by reason of Federal statutory law. This is the case when real property is owned by international organizations, foreign governments, and Indian lands--even though a statute may not expressly exempt the property, for a treaty or international agreement has the force of statutory law.

Finally, the recommendation makes no mention of flight training schools or private leasehold interests in Federal property. The present inclusion of flight training schools appears to be an outdated vestige from the period when the Federal Government was transferring airports to local governments. Therefore, the Commission recommends its exclusion.

The Commission also recommends that real property owned by the Federal Government, having private taxable leasehold interests, be included because the connection of children with the property is not subject to diminution by a private leasehold interest in that property. However, the recommendation on amount of compensation does provide that any revenues a local educational agency receives from taxation of a private leasehold interest be deducted from its amount of compensation.

IV. WHAT IS THE OBLIGATION OF THE FEDERAL GOVERNMENT WITH RESPECT TO THE EDUCATION OF CHILDREN CONNECTED WITH FEDERAL PROPERTY?

The Impact Aid Program or a similar program may be viewed as an obligation. That obligation arises from a need to preserve a federal system of government. The obligation runs to institutions within that system, the political subdivisions of the States, charged by them with a governmental function historically within the prerogatives of the States--education.

In summary, that obligation is that the Federal Government ought not exercise its power to acquire real property or otherwise exempt real property from taxation and use that property in such a manner as to impair substantially the legitimate functions of the States. One means of balancing the power of the Federal Government against the rights of the States to carry out their legitimate functions is to compensate them for the adverse effects of the exercise of that power.

The States, in delegating the responsibility for education to local educational agencies, have required that those agencies derive their revenues from taxation on real property. The States have also required that local educational agencies educate all children living within their jurisdictions. Thus, local educational agencies have a revenue burden arising from the loss of revenue from tax-exempt real property and a service burden arising from a requirement that local educational agencies educate children residing on, or whose parents are employed on, that property.

The study regarding the obligation to provide for an adequate level of education is based upon a shift in emphasis toward the educational needs of federally-connected children. This required an examination of the obligation of the Federal Government with respect to the education of federally-connected children, together with the obligation to ameliorate the loss caused by ownership of tax-exempt property, which form the basis of the Impact Aid Program. That double obligation is inherent in the policy finding that the Federal Government, as a landowner and an employer, is to be treated, to the extent practicable, as private landowners and employers are treated under the laws of the States. The Federal Government, as an employer, has recognized for many years an obligation for the education of the children of some of its employees.

There are other types of Federal obligation for the education of federally-connected children. With regard to most federally-connected children, the Federal Government has a responsibility based on its role as an employer of the children's parents. With regard toward the education of Indian children, the Federal Government has a unique obligation based on treaties[455/] and legislation.[456/] Moreover, in the case of heavily impacted school districts with high concentrations of federally-connected children, the special educational needs of such children require special consideration.

Heavily Impacted School Districts

There are two types of local educational agencies which have heavily impacted school districts: (1) those having a high percentage of federally-connected children in attendance at their schools; and (2) those having school districts in which the Federal Government exempts a substantial portion of the real property from local taxation. Both of these types of local educational agencies need special consideration in the law. The hearings indicate that as many as 500 local educational agencies are so dependent upon Impact Aid payments that a major reduction in those payments would result in the closure of their schools or, if not closure, serious reductions in their level of operation. Existing law regarding local educational agencies with high percentages of federally-connected children is clearly inadequate to meet their needs. Existing law covering the latter situation was part of the original law and has not been substantially modified since.

[455/] Indian Education Task Force Five, Final Report on Indian Education, American Indian Policy Review Commission, U.S. Cong. 61-73, 314-415 (Comm. Print 1976).

[456/] Chap. 84, Sess. II, 3 Stat. 516 (1819).

The law provides for exceptional circumstances, where a State or a local educational agency cannot or will not educate children residing on Federal property, by authorizing the Secretary of Education to arrange with local educational agencies or with heads of Federal agencies to operate schools for children residing on Federal lands in States which cannot or will not provide them a free public education. Section 6 of Public Law 874 authorizes the Secretary to "make such arrangements ... as may be necessary to provide free public education for such children."457/

The Commission found --

(1) that the Federal Government has an obligation to support public education under the laws of the States, to the extent that those laws place such an obligation on the owners of real property and to the extent that the Federal Government owns and uses real property within those States;

(2) that the Federal Government has an obligation to assist in the support of education for the children of its employees without regard for their places of residence;

(3) that the Federal Government has an obligation for the education of children living on Federal property;

(4) that the Federal Government has a special obligation, under its treaties with Indian tribes, for the education of Indian children;

(5) that the Federal Government has a special obligation to heavily burdened local educational agencies;

(6) that the Impact Aid Program is appropriate for meeting, and should be designed to fulfill, these obligations; and

(7) that the Federal Government should maintain section 6 schools as they presently exist, under present law.

On the basis of these findings, the Commission recommends --

(1) THAT THE FEDERAL GOVERNMENT EXPRESSLY RECOGNIZE ITS OBLIGATION TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION FOR CHILDREN RESIDING ON FEDERAL PROPERTY OR RESIDING WITH A PARENT WORKING ON FEDERAL PROPERTY BY AMENDING THE LAW DECLARING SUCH AN OBLIGATION, AND THAT THE FEDERAL GOVERNMENT HAS A SPECIAL OBLIGATION WITH RESPECT TO CHILDREN WHO BOTH RESIDE ON AND RESIDE WITH A PARENT EMPLOYED ON FEDERAL PROPERTY;

457/ Pub. L. No. 874, 81st Cong., 2d Sess. §6(a) as amended, 20 U.S.C.A. §241(a) to 241(b) (1974 & Supp. 1978).

(2) THAT

(a) THE CONGRESS RECOGNIZE THAT THE UNITED STATES HAS A SPECIAL AND UNIQUE OBLIGATION WITH RESPECT TO THE EDUCATION OF INDIAN CHILDREN WHICH ARISES FROM TREATIES BETWEEN THE UNITED STATES AND INDIAN TRIBES AND THAT THE IMPACT AID PROGRAM IS ONE OF SEVERAL MEANS BY WHICH THE UNITED STATES CAN, IN PART, SATISFY THAT OBLIGATION;

(b) THE EDUCATION OF INDIAN CHILDREN BE AVAILABLE IN SUCH A FORM AND IN SUCH A MANNER AS WILL ENABLE THEM BOTH TO PERPETUATE THEIR EXISTENCE AS INDIAN PEOPLE AND TO FUNCTION EFFECTIVELY IN THE MAJORITY SOCIETY AND THAT DECISIONS REGARDING THE CONDUCT OF THEIR EDUCATION SHOULD BE MADE BY THEIR PARENTS AND THE TRIBES OF WHICH THEY ARE MEMBERS; AND

(c) TO THE EXTENT THAT THE EDUCATION OF INDIAN CHILDREN IS CARRIED OUT THROUGH LOCAL EDUCATIONAL AGENCIES, AS DETERMINED BY THEIR PARENTS AND THE TRIBES OF WHICH THEY ARE MEMBERS, THESE CHILDREN SHOULD HAVE THE FULL RIGHTS OF CITIZENS UNDER THE EDUCATION LAWS OF THE STATES, AS WELL AS THE BENEFITS WHICH ACCRUE TO THEM UNDER THE TREATIES OF THE UNITED STATES, AND THAT THE IMPACT AID PROGRAM BE SPECIFICALLY DESIGNED TO ACCOMMODATE THOSE RIGHTS AND PROVIDE, IN PART, THOSE BENEFITS;

(3) THAT THE LAW MAKE PROVISIONS FOR INSURING THAT LOCAL EDUCATIONAL AGENCIES WITH HEAVILY IMPACTED SCHOOL DISTRICTS MAINTAIN THEIR LEVEL OF EDUCATION SERVICES;

(4) THAT THE FEDERAL OBLIGATION BE IMPLEMENTED BY PROVIDING THAT LOCAL EDUCATIONAL AGENCIES BE COMPENSATED AT THE RATE OF PAYING HALF THE LOCAL SHARE OF THE COST OF EDUCATION PER CHILD FOR EACH CHILD RESIDING ON FEDERAL PROPERTY AND HALF OF THE LOCAL SHARE FOR THOSE WHOSE PARENTS ARE EMPLOYED THEREON; AND

(5) THAT FEDERALLY-OPERATED SCHOOLS BE MAINTAINED AS THEY PRESENTLY EXIST.

V. SHOULD LOCAL EDUCATIONAL AGENCIES EDUCATING CHILDREN IN ATTENDANCE AT PUBLIC SCHOOLS BY REASON OF FEDERAL LAW OR ACTIVITIES BE COMPENSATED THEREFOR?

The Federal Government imposes burdens on school districts by owning tax-exempt land and by increasing enrollments with children of families who live or work on Federal land. These are the traditional Impact Aid "revenue" and "service" burdens. There are other burdens carried by local educational agencies because of Federal mandates or Federal activities not covered by present law. The existence of these additional impacts, which are traceable to Federal policies or activities, raises the issue that Impact Aid should be expanded to compensate for the burden those policies and activities impose.

Section 4 of Public Law 874 currently provides for payments to local educational agencies experiencing sudden and substantial increases in enrollment caused by increased Federal activities. If additional impacts associated with the education of refugee children and undocumented aliens and the costs associated with compliance with Federal laws and regulations were to be included as Federal activities warranting compensation under the Impact Aid Program, section 4 is the appropriate place in the law to provide for such assistance.

Section 4 may be considered a nullity today because it has not been used for several years. It does, however, reflect an important policy with regard to situations which may be considered the logical counterpart of those covered by section 2. Whereas, section 2 provides for compensation when mere acquisition of real property by the Federal Government--regardless of schoolchildren associated with that property--imposes a burden, section 4 provides for compensation when the mere presence of a child in school as the result of Federal activities--regardless of property ownership--constitutes a burden.

The Impact Aid law provides that children of parents meeting the definition of a refugee in the Migration and Refugee Assistance Act of 1962 are considered federally-connected children for purposes of qualifying for Impact Aid. In practice, aliens under the 1962 act meant Cuban refugees only. A stringent eligibility requirement, however, limited Impact Aid to school districts whose enrollment was at least 20 percent Cuban refugees. There may be some statutory authority for broadening the coverage beyond Cuban refugee children under the Impact Aid law. It is arguable that the Impact Aid statute should be read to compensate local educational agencies for the presence of Indochinese refugee children enrolled. It is also arguable that the 20 percent eligibility requirement--a stringent and not entirely reasonable one--should be discontinued.

The arguments for inclusion of refugee children also apply to expanding Impact Aid to compensate for the presence of children of undocumented aliens in public schools. It can be argued that the presence of undocumented aliens in a school is "traceable directly" to a "Federal activity," warranting financial assistance under section 4 of Impact Aid.

The United States has taken the position that the children of undocumented aliens have a constitutional right to a free public education as other children have. Also, it has been decided in the Federal courts that Texas schools must provide the children of undocumented aliens a free public education. The question is whether this is sufficient "Federal connection" to warrant inclusion of children of undocumented aliens in the Impact Aid Program. All of the facts required for informed Commission consideration of this issue are not available to the Commission due to time constraints, but such facts should be studied further.

The Commission found --

(1) that section 4 of Public Law 874 is outdated and a nullity in current law and, unless it is modified to meet current circumstances, it should be repealed;

(2) that, even though the evidence before the Commission regarding the full scope of burden placed on local educational agencies to meet the educational needs of refugee children is inadequate, that evidence, taken with the uniquely Federal nature of policies giving rise to their presence in public schools, is sufficient to support a recommendation that section 4 be reactivated and modified to assist local educational agencies in meeting the cost of their education for a limited period of time;

(3) that the current provisions in section 3 of Public Law 874 regarding refugee children should be removed therefrom and placed in a modified form in section 4;

(4) that the evidence on the problems arising in connection with the education of the children of undocumented aliens is insufficient, at this time, to support a recommendation and needs further investigation; and

(5) that the evidence on the costs incurred by local educational agencies in complying with Federal laws and regulations indicates a serious problem may exist and further study of that problem is necessary.

On the basis of these findings, the Commission recommends --

(1) THAT

(a) THE LAW BE MODIFIED TO PROVIDE FOR SPECIAL PROVISION FOR PAYMENTS TO LOCAL EDUCATIONAL AGENCIES FOR THE EDUCATION OF CHILDREN OF DOCUMENTED ALIENS (REFUGEES);

(b) SINCE THE FULL SCOPE AND NATURE OF THE PROBLEMS OF PROVIDING THOSE CHILDREN WITH ADEQUATE EDUCATIONAL SERVICES IS NOT YET KNOWN, SUCH MODIFICATION BE IMMEDIATE, BUT OF A TEMPORARY NATURE AND PROVIDE THAT ANY LOCAL EDUCATIONAL AGENCY PROVIDING FREE PUBLIC EDUCATION FOR AT LEAST TEN SUCH CHILDREN DURING THE FIRST TWO YEARS AFTER THEIR ENTRY BE COMPENSATED FOR THE COST OF THAT EDUCATION;

(c) THE CONGRESS EXAMINE THOSE PROBLEMS IN ORDER TO DETERMINE THEIR NATURE AND SCOPE AND DEVELOP A MEANS OF SOLVING THEM;

(2) THAT, SINCE THE LEGAL OBLIGATIONS OF THE STATES WITH RESPECT TO THE EDUCATION OF UNDOCUMENTED ALIENS ARE NOT YET DETERMINED AND THE DEGREE TO WHICH THE PROVISION OF THAT EDUCATION IS A RESPONSIBILITY OF THE STATES HAS NOT YET BEEN DETERMINED AND CAN BE DETERMINED ONLY WITH FURTHER STUDY, THE CONGRESS CONDUCT A THOROUGH EXAMINATION OF THESE PROBLEMS IN ORDER TO DETERMINE THEIR NATURE AND SCOPE AND DEVELOP A MEANS OF SOLVING THEM; AND

(3) THAT, SINCE THE COSTS INCURRED BY LOCAL EDUCATIONAL AGENCIES IN COMPLYING WITH FEDERAL LAWS AND REGULATIONS REGARDING EQUALITY OF EDUCATIONAL OPPORTUNITY INVOLVE MANY ISSUES BEYOND THE SCOPE OF THE MANDATE OF THE COMMISSION, THE CONGRESS EXPLORE THE FEASIBILITY OF CONDUCTING SUCH A STUDY.

VI. WHICH LOCAL EDUCATIONAL AGENCIES SHOULD BE ELIGIBLE FOR IMPACT AID PAYMENTS?

Since the inception of the Impact Aid Program, the Congress has limited participation in the program by establishing minimum eligibility standards for local educational agencies applying for payments. As the law now stands, in order for a local educational agency to qualify for payment, it must have either 400 federally-connected children in its average daily attendance, or the number of federally-connected children must equal three percent of total average daily attendance; in either case the local educational agency must have at least ten federally-connected children. The fairness and necessity of such minimum requirements in the Impact Aid Program has been a subject of debate.

There appears to be little, if any, reason to set an arbitrary limit on participation in the program based on a percentage of federally-connected children in the schools of a local educational agency. The obligation of the Federal Government for the education of those children is the same for each federally-connected child without regard for whether that child is one of a number constituting 2.9 percent of enrollment or 3.0 percent of it. It has been suggested previously that since it can be argued that each federally-connected child gives rise to some type of burden, there should be no minimum impact to qualify for assistance under the program.

The percentage eligibility requirement, therefore, appears to have no empirical foundation and is a vestige of an old policy designed to limit the size of the program; it has the effect of ignoring the obligation for the service burden to the excluded local educational agencies.

The Commission found --

(1) that the eligibility requirements limiting participation in the Impact Aid Program are no longer valid and should be removed;

(2) that the requirement that there be at least ten federally-connected children for eligibility is still valid and should be continued; and

(3) that, if budgetary concerns are a factor in limiting participation in the program, that factor should be considered as a matter of priorities in making payments when appropriations are insufficient to satisfy all entitlements.

However, even though the original purpose of the eligibility requirement is no longer valid, there are administrative reasons for retaining some minimum number of federally-connected children as a prerequisite for receiving Impact Aid payments. This is based on the policy that the administrative work necessary for processing an application and making a payment is more costly both to the applicant and to the Federal Government than any benefit derived from the small payment which would result from the application. This is a requirement with historical support both within the Impact Aid Program[458] and in other Federal education programs,[459] though inflation and other economic factors may warrant either an increase or reduction in this threshhold. The Federal Government has not, however, made a determination that such an alteration is warranted.

For these reasons, the Commission recommends that the current eligibility requirements be retained, with the understanding that this recommendation is based only on a consideration of administrative efficiency.

Therefore, the Commission recommends --

THAT THE ELIGIBLITY REQUIREMENTS BE RETAINED AS THEY EXIST IN CURRENT LAW.

458/ H.R. Rep. No. 2287, 81st Cong., 2d Sess. 12 (1950).

459/ Title I of the Elementary and Secondary Education Act of 1965, Pub. L. No. 95-561, §111(b)(1), 92 Stat. 2156 (1978) (amending 20 U.S.C.A. §3241c(b)(1) (1974)).

VII. WHAT SHOULD BE THE AMOUNT OF COMPENSATION?

After having found that local educational agencies should be compensated for the burdens placed upon them by Federal activities, and that there are obligations which arise with respect to the education of federally-connected children, the question the Commission addressed was the amount of that compensation.

In general, the amount of compensation under current law is based upon a calculation of the "service burden" (the cost of educating federally-connected children) rather than an estimated "revenue burden" (the loss of revenue by reason of Federal immunity from local taxation). The exception is the case of payments under the current section 2 which are payments for loss of revenue.

The amount of compensation a local educational agency receives under section 3 is determined by multiplying the number of federally-connected children in various categories by an appropriate percentage of the local contribution rate (LCR) for that local educational agency.

As Impact Aid was originally written, the LCR for a local educational agency in any State is determined for each year on the basis of the local portion of average per-pupil current expenditures by generally comparable local educational agencies in the State. This method of computation was designed to insure that the entitlement per child would be "roughly equivalent to the amount per child which other property owners in comparable communities pay toward the cost of educating children,"[460] since it is difficult to calculate how much revenue would be raised locally in a federally-affected community in the absence of Federal ownership.

The effect of the local contribution rate approach was to compensate local educational agencies for losses in local revenues--not for any loss of State revenues. No portion of payment was to be made in consideration of the State share of the cost of educating children because, according to legislative history of the original law, (1) the tax-exempt status of Federal property did not operate to reduce State revenues, and (2) State governments could realize as much revenue from the parents of federally-connected children through sales, income, and other taxes as from other parents in the State.[461]

The LCR concept as originally formulated reflected congressional concern with the "revenue burden" on local educational agencies. It did not necessarily reflect the cost of educating federally-connected children or the educational needs of such children. In fact, the theory behind the original LCR concept is neutral on the question of educational needs. It presupposes that the Federal Government should pay local educational agencies the money necessary for them to treat the educational needs of federally-connected children the same way they treat those of children who are not federally-connected.

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[460] H.R. Rep. No. 2287, 81st Cong., 2d Sess. 12 (1950).

[461] *Id.* 13.

The LCR concept has been followed more in theory than in practice since 1950. Amendments to Public Law 874 in 1953, 1956, and 1958 made it possible for local educational agencies to choose LCRs other than those with comparable districts. In 1953, local educational agencies were given the option of choosing half the State average per-pupil expenditure as LCR; in 1956 districts were allowed to choose half the national average local contribution rate. In 1958, that option was changed to make the alternative half the national per-pupil expenditure.

The rationale for the change reflects a concern for the educational needs of federally-connected pupils. By these actions, Congress displayed a concern for the "service burden" associated with the presence of federally-connected children in a school in addition to--if not to the exclusion of--the "revenue burden," a shift in emphasis in the theory of compensation.

The logic underlying LCR as originally formulated is further contradicted by amendments since 1974 which allow awarding 125 percent of LCR for children residing on Indian lands and 150 percent of LCR for handicapped dependents of military personnel. Setting an entitlement at more than 100 percent of LCR belies the theory of compensating for a Federal burden as measured by local contribution which underlies the LCR concept. The special entitlement rates for children residing on Indian lands and for handicapped dependents of military personnel are based on a recognition of the high cost of educating children with special educational needs.

Reductions in payments caused by insufficient appropriations have resulted in a situation in which the LCR used to determine entitlement is reflected in payments only for local educational agencies receiving 100 percent of entitlement for "A" children--local educational agencies which are in highly unusual circumstances and for which the "comparable district" method of computing LCR has not been appropriate in recent years.

Burden is a combination of revenue lost because of Federal ownership of tax-exempt land and expenditures made because federally-connected children attend public school. The cost of providing an adequate level of education for federally-connected children is part of the financial burden imposed by the Federal presence. Given the Federal obligation toward the education of federally-connected children and the expressed legislative concern with that level of education, it is reasonable that the cost of educating those children adequately should provide a benchmark for determining amount of compensation for the Federal presence.

As is always the case when a general formula is drawn, there are exceptional circumstances which, when that formula is applied, result in inequities. In the past, Public Law 874 has been amended many times in attempts to alter the method for computing the amounts of entitlements and the rates at which payments are made on those entitlements in order to accomodate special circumstances. This has resulted in a complex law under which all local educational agencies must operate--even though the complexities are the result of a minority of situations.

The Commission believes that the entire concept of local contribution rate should be avoided and a method of determining the amount of compensation based upon principles consistent with those underlying the program should be devised. Although improved analytical techniques in the fields of economics and school finance that could make a more precise formula for measuring burden and obligation under State law are being developed, they require a great deal of study and testing for their improvement and validation. At some point, the Commission hopes that these techniques can be perfected. The Commission's economic impact model was developed as part of this effort.

The Commission believes that the principles in developing those techniques can be laid out and applied at this time in a general sense and used in a formula for determining entitlements. A formula for determining that amount must be based upon three definitions:

- What is the cost of providing an "adequate level of education"?
- What is the "local share" of that cost?
- What is the "appropriate percentage" of the local share of that cost?

In defining these terms, the Commission has sought a means of making judgments which are as nearly consistent with the basic theory of the Impact Aid Program as is possible. That theory is that Federal payments are for the purpose of enabling the States, through their local educational agencies, to carry out their historic responsibilities under a federal system, notwithstanding Federal burdens imposed upon those agencies. Within that theory is an additional principle that the amount of those payments should take into consideration the need to provide federally-connected children an adequate level of education, whenever they attend school.

It is for these reasons that the Commission believes that the law should be made capable of handling payments to the great majority of local educational agencies while, at the same time, those with unusual or difficult circumstances be provided with adjustments through administrative procedure. These adjustments would increase the amount of expenditures necessary to provide an adequate level of education for special categories of federally-connected children, such as Indian children, military dependents, children in low-rent public housing, children in heavily impacted local educational agencies, and in cases where school districts have extensive federally-connected enrollment or substantial amounts of federally-owned property.

The Commission found --

(1) that the amount of compensation to local educational agencies should be based upon a consideration of --

(a) the benefit conferred, and burden placed, upon local educational agencies by the Federal Government, and

(b) the obligation of the Federal Government to provide an adequate level of education for federally-connected children;

(2) that the magnitude of the burden so placed and the benefit so conferred should be determined on a consideration of --

(a) loss of revenue to such agencies by reason of the existence of Federal property within their school districts,

(b) the cost of providing education for federally-connected children at a level adequate to meet their educational needs, and

(c) the economic benefit to such agencies derived from Federal activities;

(3) that the most nearly equitable method for computing the amounts to which local educational agencies should be entitled as compensation is feasible and should be perfected; though time and budget constraints have not permitted the Commission to perfect such a method, that method should be based upon a consideration of --

(a) the net per-pupil burden placed upon such agencies, and

(b) the per-pupil obligation, under the laws of the States, if the Federal Government were treated as a private owner and user of real property in the States;

(4) that, though the Commission is not able to perfect the most nearly equitable method for computing entitlements, a simpler yet more nearly equitable method than that which is used under current law can be achieved, to wit:

(a) a fair measure for determining an adequate level of education for federally-connected children in any State can be based upon a consideration of the average per-pupil expenditure in that State or in the United States, whichever is greater,

(b) the Federal payment should be based upon the amount of the local share of the cost of education under the laws of the States,

(c) local expenditures for education should be considered as those expenditures by local educational agencies for the maintenance and operation of schools which are derived from sources other than State aid payments to them for that purpose, and

(d) that any taxes or payments in-lieu of taxes received in a given year in connection with any property included in the definition of Federal property should be taken into consideration in determining the amount of the Impact Aid payment which that local educational agency receives in that year;

(5) that, in the case of any local educational agency having a school district in which the existence of Federal property is so extensive as to make a payment to that agency based on the principles stated in findings (3) and (4) inadequate to compensate equitably that agency for the burden imposed thereby, the amount of the payment to that agency should be based on an assessment of the actual burden imposed by Federal ownership and the actual expenditures necessary to provide an adequate level of education for the children in attendance at the schools of such agency;

(6) that, in the case of any local educational agency in which the number of federally-connected children constitutes such a high percentage of its average daily membership that a payment to that agency, based on the principles stated in findings (3) and (4), is inadequate to provide an adequate level of education for the children in attendance at the schools of that agency, the amount of the payment to that agency should be based on an assessment of the actual expenditures necessary to provide an adequate level of education for such children; (an "adequate level of education" should be defined to mean a per-pupil expenditure which meets or exceeds the average per-pupil expenditure of either the State in which the local educational agency is located or the nation as a whole; a local educational

agency may also be considered to be unable to provide an adequate level of education if, even though the per-pupil expenditure in that local educational agency exceeds the State and the national average per-pupil expenditure, a higher expenditure is required because of special circumstances;

(7) that, if there is a determination that the fiscal benefit conferred upon a local educational agency, plus the amount of the payment to that local educational agency, based upon the principles stated in findings (3) and (4), exceeds the burden placed on that agency, such amount should be adjusted accordingly; and

(8) that there should be procedures, similar to those in current law, for initiating proceedings, making determinations, and administrative and judicial review in the situations described in findings (5), (6), and (7).

On the basis of these findings, the Commission recommends --

(1) THAT, PENDING THE DEVELOPMENT OF A METHOD OF DETERMINING A MORE PRECISE MEASURE OF THE FEDERAL BURDEN PLACED UPON LOCAL EDUCATIONAL AGENCIES, THE AMOUNT OF COMPENSATION TO WHICH LOCAL EDUCATIONAL AGENCIES ARE ENTITLED BE COMPUTED, WITH RESPECT TO CHILDREN CONNECTED WITH FEDERAL PROPERTY, AS FOLLOWS:

(a) LOCAL EDUCATIONAL AGENCIES WOULD BE COMPENSATED ON THE BASIS OF A "FEDERAL CONTRIBUTION RATE" (FCR), FOR EACH SUCH CHILD IN ATTENDANCE AT ITS SCHOOLS.

(b) EACH LOCAL EDUCATIONAL AGENCY WOULD BE ENTITLED TO A PAYMENT FOR EACH CHILD RESIDING ON FEDERAL PROPERTY EQUAL TO 50 PERCENT OF THE FCR.

(c) EACH LOCAL EDUCATIONAL AGENCY WOULD BE ENTITLED TO A PAYMENT FOR EACH CHILD RESIDING WITH A PARENT EMPLOYED ON FEDERAL PROPERTY EQUAL TO 50 PERCENT OF THE FCR.

(d) THE FCR FOR ANY LOCAL EDUCATIONAL AGENCY WOULD BE EQUAL TO THE LOCAL SHARE PER CHILD OF THE COST OF EDUCATION FOR THAT AGENCY.

(e) THE LOCAL SHARE OF THE COST OF EDUCATION FOR ANY LOCAL EDUCATIONAL AGENCY WOULD BE EQUAL TO THE DIFFERENCE BETWEEN (1) THE AMOUNT DETERMINED TO BE NECESSARY TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION PER CHILD IN THE SCHOOLS OF THAT AGENCY AND (2) THE CONTRIBUTION PER CHILD BY THE STATE IN WHICH THAT AGENCY IS LOCATED FOR THE MAINTENANCE AND OPERATION OF ITS SCHOOLS.

(f) THE FCR FOR ANY LOCAL EDUCATIONAL AGENCY WOULD NOT BE LESS THAN 50 PERCENT OF THE AVERAGE PER-PUPIL EXPENDITURE IN THE STATE IN WHICH IT IS LOCATED.

(g) THE AMOUNT NECESSARY TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION PER CHILD IN THE SCHOOLS OF A LOCAL EDUCATIONAL AGENCY WOULD BE THE GREATER OF THE STATE AVERAGE PER-PUPIL EXPENDITURE OR THE NATIONAL AVERAGE PER-PUPIL EXPENDITURE.

(2) THAT, IN CASES WHERE THE CHILDREN RESIDING ON, OR WHERE THE CHILDREN OF PARENTS EMPLOYED ON, FEDERAL PROPERTY HAVE EDUCATIONAL NEEDS WHICH ARE SO SUBSTANTIALLY DIFFERENT FROM THE GENERAL EDUCATIONAL NEEDS OF CHILDREN IN THE STATE OR IN THE NATION AS TO REQUIRE AN EXPENDITURE OF GREATER THAN THE AVERAGE PER-PUPIL EXPENDITURE IN ORDER TO MEET THOSE NEEDS, PROVISION BE MADE FOR ADJUSTING THE AMOUNT NECESSARY THEREFOR ACCORDINGLY;

(3) THAT

(a) IN A CASE WHERE THE EXTENT OF FEDERAL PROPERTY IS SO GREAT AS TO IMPAIR THE ABILITY OF A LOCAL EDUCATIONAL AGENCY TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION FOR THE CHILDREN IN ATTENDANCE AT ITS SCHOOLS UNDER THE LAWS OF THE STATE, THE AMOUNT OF THE ENTITLEMENT OF THAT AGENCY BE DETERMINED IN ACCORDANCE WITH CRITERIA DESIGNED TO INSURE THAT SUFFICIENT FUNDS ARE AVAILABLE TO ENABLE SUCH AGENCY TO PROVIDE SUCH A LEVEL OF EDUCATION FOR THOSE CHILDREN; AND

(b) IF THE AREA OF FEDERAL PROPERTY IN THE SCHOOL DISTRICT OF A LOCAL EDUCATIONAL AGENCY CONSTITUTES AT LEAST TEN PERCENT OF THE TOTAL AREA OF SUCH DISTRICT, AND IF THAT PROPERTY HAS BEEN SUBJECT TO STATE AND LOCAL TAXATION AND HAS BEEN EXEMPTED FROM STATE OR LOCAL TAXATION BY FEDERAL ACQUISITION OR OPERATION OF FEDERAL LAW, A REBUTTABLE PRESUMPTION SHALL LIE IN FAVOR OF A DETERMINATION THAT THE ABILITY OF THAT AGENCY TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION IS IMPAIRED;

(4) THAT

(a) IN A CASE WHERE THE NUMBER OF FEDERALLY-CONNECTED CHILDREN IN ATTENDANCE AT THE SCHOOL OF A LOCAL EDUCATIONAL AGENCY CONSTITUTES SUCH A HIGH PERCENTAGE OF THE TOTAL NUMBER OF CHILDREN IN ATTENDANCE AT ITS SCHOOLS THAT THE AMOUNT TO WHICH THAT AGENCY WOULD BE ENTITLED UNDER RECOMMENDATION (1) WOULD BE INSUFFICIENT TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION FOR THOSE CHILDREN, THE AMOUNT OF THE ENTITLEMENT FOR THAT AGENCY BE DETERMINED IN ACCORDANCE WITH CRITERIA DESIGNED TO INSURE THAT SUFFICIENT FUNDS ARE AVAILABLE TO ENABLE SUCH AGENCY TO PROVIDE SUCH A LEVEL OF EDUCATION FOR THOSE CHILDREN; AND

(b) IF THE NUMBER OF CHILDREN WHO RESIDE ON, AND RESIDE WITH A PARENT EMPLOYED ON, FEDERAL PROPERTY ("A" CHILDREN) IN ATTENDANCE AT THE SCHOOLS OF A LOCAL EDUCATIONAL AGENCY CONSTITUTES AT LEAST 20 PERCENT OF THE TOTAL NUMBER OF CHILDREN IN SUCH SCHOOLS, OR IF THE NUMBER OF FEDERALLY-CONNECTED CHILDREN IN SUCH SCHOOLS CONSTITUTES AT LEAST 25 PERCENT OF SUCH TOTAL NUMBER (COUNTING "B" CHILDREN AS ONE-HALF), THAT AGENCY SHALL BE DEEMED TO HAVE SUCH A HIGH PERCENTAGE OF FEDERALLY-CONNECTED CHILDREN THAT ITS ENTITLEMENT IS INSUFFICIENT;

(5) THAT THERE BE PROCEDURES FOR MAKING DETERMINATIONS CONCERNING THE AMOUNTS AVAILABLE TO LOCAL EDUCATIONAL AGENCIES RELATING TO THE ADEQUACY OF THE LEVEL OF EDUCATION AND THEIR ENTITLEMENTS BE ESTABLISHED SO AS TO INSURE PROPER ADMINISTRATIVE AND JUDICIAL REVIEW THEREOF; AND

(6) THAT THE ENTITLEMENT OF EACH LOCAL EDUCATIONAL AGENCY BE REDUCED BY AN AMOUNT EQUAL TO THE AMOUNT THAT IT RECEIVES IN PAYMENTS FROM TAXABLE LEASEHOLD INTERESTS IN FEDERAL PROPERTY AND FROM PAYMENTS IN-LIEU OF TAXES FROM THE FEDERAL GOVERNMENT.

These recommendations merit special comment in order to make clear some of their implications.

The formula set out under recommendation (1) is, in principle, based upon the same theory as that underlying current law. It is, however, simpler than current law; it is clearer; and it states explicitly what is implicit in current law.

The term "Federal Contribution Rate" (FCR) is used because "Local Contribution Rate" is obsolete and misleading in practice. It is the Federal contribution which is being determined for the purpose of compensating local educational agencies for a Federal burden and a Federal obligation. This approach is consistent with the service burden method of computing the amount of compensation.

Recommendations (1)(b) and (1)(c) would require a computation of entitlements based on the place of residence of federally-connected children apart from that based upon the place of employment of their parents. Children living in low-rent public housing would be counted in the same manner as those residing on military installations--indistinguishably. At the same time children of military personnel would be counted in the same way as those of civilian personnel.

This approach would no longer allow a distinction between so-called "A" children and "B" children--a distinction the Commission has found to be artificial and to have no basis in fact or logic when computing the burden.

Recommendations (1)(d) and (1)(e) reverse the present procedure for determining "local share" of the cost of education. The present procedure was established in the original law at a time when local share was determined at the local level and non-local sources of revenue formed no pattern upon which policy could be based. Current conditions are different in that local share is now, by and large, determined by the States either by law or by State contributions, or both. The States by their actions determine local share, in that the non-State share is the local share. It is upon this determination that the Federal contribution should be based.

Administratively, the recommended approach is easier than the current method. The current method requires that each local educational agency determine which of its revenues come from local sources. State laws regulating local taxation and tax-collection procedures tend to blur the distinctions necessary to make nationwide rules consistent. It is easier to determine the amount of State aid.

The State contribution approach is consistent with the policy of the Commission in favor of operating the program to the extent practicable under the education laws of the States.

Recommendations (1)(f) and (1)(g) are corollaries with the minimum local contribution rate provisions in current law--one-half the State average per-pupil expenditure and one-half the national average per-pupil expenditure.

The recommendation in favor of a minimum Federal contribution rate equal to 50 percent of the State average per-pupil expenditure is necessary because having no such minimum would have the effect of penalizing local educational agencies in States with high State contributions--contrary to the policy of Federal neutrality with respect to State laws and the relations between the States and their local educational agencies.

The recommendation that the amount necessary to provide an "adequate level of education" for federally-connected children be based upon the greater of the State average per-pupil expenditure or national average per-pupil expenditure is based upon two policies: (1) that the Federal Government operate, to the extent practicable, under State laws (State average per-pupil expenditure); and (2) that, should the effect of that policy come into conflict with the Federal obligation with respect to the education of federally-connected children, it use the collective decisions of all the States (national average per-pupil expenditure).

Recommendation (2) is based upon the provisions in current law which create entitlements using local contribution rates at higher than 100 percent: those for handicapped military dependents; and those for children residing on Indian lands. The policy underlying those provisions recognizes differences in educational needs and the costs of meeting those needs.

The Commission believes that the specification of percentages in the law is unduly rigid and that there may be categories of federally-connected children having special educational needs which should be recognized, such as all military dependents and children residing in low-rent public housing. For this reason the Commission is recommending that a procedure be adopted for adjusting the amount necessary for an adequate level of education.

Recommendations (3) and (4) are exceptions to the formula set out in Recommendation (1).

VIII. HOW SHOULD FUNDS BE ALLOCATED AMONG LOCAL EDUCATIONAL AGENCIES WHEN APPROPRIATIONS ARE INSUFFICIENT TO SATISFY ALL ENTITLEMENTS?

Prior to fiscal year 1969, the appropriations for making payment to local educational agencies under Public Law 874 were, with the exceptions of fiscal years 1965 and 1967, sufficient to satisfy fully the entitlements created under the law. However, since fiscal year 1969, appropriations have been consistently insufficient to satisfy entitlements, and the Congress began to make special provision for heavily impacted school districts, resulting in the "three tier" system of payments in 1974. Subsequent appropriations acts have modified further this "ratable reduction" section of the law so that it no longer controls the priorities in making Impact Aid payments--causing confusion, extremely difficult administrative problems, and delays in making payments.

Appropriations ought to be sufficient to satisfy all entitlements; and it is only reluctantly that the Commission would consider recommendations which would have the effect of giving entitlements of some local educational agencies higher priority than those of others. The mandate of the Commission, being as it is, does require that it do so; and therefore, the Commission has sought some rational principle upon which such a recommendation could be based.

The Commission wishes to make clear that, in its assessment of the equity in the structure of the Impact Aid Program, every effort has been made to make an objective determination of the Federal burdens on local educational agencies, based upon legal and economic principles, and that the obligations which arise from those burdens are real and substantial. Among local educational agencies the degree and type of burden varies considerably, but the burden is no less real for a lightly "impacted" school district than it is for a heavily "impacted" school district; they differ only in the degree to which failure to compensate for the burdens impairs the ability of local educational agencies to operate.

Considering the legal and educational polices upon which the preceding recommendations are based, there are two which appear to be appropriate for forming the basis for a recommendation on priorities:

(1) the policy that Impact Aid is necessary under the federal system of government to preserve local educational agencies with such heavily impacted school districts that their ability to operate would be threatened without Impact Aid payments; and

(2) the policy that the Federal Government has an obligation for the education of federally-connected children.

The Commission believes that these principles provide sufficient guidance for determining at least which local educational agencies must be guaranteed payment of their full entitlement: those which, if they do not receive the full entitlement, can not provide an adequate level of education for federally-connected children.

In the case of local educational agencies with heavily impacted school districts, the potentially destructive force of the power of the Federal Government is a reality. Evidence before the Commission indicates that, unless full entitlements are paid, there are more than 300 local educational agencies that would be forced to close schools or that would have their operations so severely disrupted as to affect adversely the education of children for whom the Federal Government has an obligation. This would be a failure of obligation, not only to the local educational agency under the federal system, but to the children. For these children there should be an enforceable guarantee of full payment.

Beyond the priority given heavily impacted districts and the low priority given to extremely lightly impacted districts, the Commission can find no principle which can be applied rationally to divide the entitlement of one local educational agency from that of another; and, if they must suffer reductions, then equity requires that they all receive similar treatment--pro rata reductions.

The Commission delayed consideration of findings on priorities, and thereafter adopted recommendations, without findings.

The Commission recommends --

(1) THAT ALL ENTITLEMENTS UNDER THE IMPACT AID PROGRAM BE FUNDED FULLY; AND

(2) THAT

(a) SHOULD CIRCUMSTANCES PROHIBIT FULL FUNDING OF ALL ENTITLEMENTS FOR ANY FISCAL YEAR, THEN THOSE LOCAL EDUCATIONAL AGENCIES WITH HEAVILY IMPACTED SCHOOL DISTRICTS BE GUARANTEED PAYMENT OF FULL

ENTITLEMENTS FOR THAT YEAR, AND THE REMAINDER OF THE LOCAL EDUCATIONAL AGENCIES BE PAID A PORTION OF THEIR ENTITLEMENTS ON A PRO RATA BASIS, AND

(b) FOR THE PURPOSES OF THIS SECTION, THE TERM "HEAVILY IMPACTED SCHOOL DISTRICTS" BE DEFINED AS THOSE LOCAL EDUCATIONAL AGENCIES WHICH HAVE BEEN DETERMINED EITHER (1) TO HAVE SCHOOL DISTRICTS IN WHICH THE EXTENT OF FEDERAL PROPERTY IS SO SUBSTANTIAL AS TO IMPAIR THE ABILITY OF THOSE AGENCIES TO PROVIDE AN ADEQUATE LEVEL OF EDUCATION FOR THE CHILDREN IN ATTENDANCE AT THEIR SCHOOLS, OR

(2) TO HAVE IN ATTENDANCE AT THEIR SCHOOLS A PERCENTAGE OF FEDERALLY-CONNECTED CHILDREN WHICH IS SO HIGH THAT FAILURE TO PAY THE FULL ENTITLEMENT WOULD RESULT IN THE CLOSURE OF THEIR SCHOOLS OR SUBSTANTIAL REDUCTIONS IN THE LEVEL OF EDUCATION OFFERED TO THE CHILDREN IN ATTENDANCE AT THEIR SCHOOLS. (FOR THE PURPOSES OF THIS RECOMMENDATION, HEAVILY IMPACTED SCHOOL DISTRICTS ARE THOSE FITTING WITHIN THE DETERMINATION MADE UNDER RECOMMENDATIONS 3 AND 4 OF SECTION VII).

IX. SHOULD THE STATES TAKE IMPACT AID PAYMENTS INTO CONSIDERATION IN THEIR STATE AID PROGRAMS?

Under current law, no Impact Aid payments can be made to a local educational agency in a State which takes Impact Aid into consideration when determining the amount of State aid to which that agency is entitled. There is an exception to this general rule: if a State aid plan is designed to "equalize expenditures," then a local educational agency may receive Impact Aid even though the State considers those payments local sources.

The policy of Impact Aid toward equalization is a matter of concern to States attempting to equalize expenditures among districts. Those States contend that Impact Aid payments can contribute to per-pupil expenditure disparities. If Impact Aid payments cannot be considered as part of the resources available to a district, those States argue, then equalization efforts will be defeated.

The controversy respecting State treatment of Impact Aid payments stems from the States' view of their State aid programs and their view of what Impact Aid is. The States contended that if Impact Aid payments were not taken into consideration in their State aid programs, those payments, when made in addition to the equalization provisions of State law, had a disequalizing effect and defeated the purpose of their plans. It was for this reason that the equalization exception was made in the statutory prohibition against taking Impact Aid payments into consideration in State Aid.

It is the view of this Commission that the Education Department has been unduly lax in enforcing the prohibition. The 25 percent disparity permitted under the expenditure equalization regulation, on its face, is not equalized expenditures (especially when the highest and lowest expenditures are not included within the disparity limits). The "power equalization" regulation does not even address the issue of equalized expenditures and appears to have no basis in law.

The State treatment issue is entirely irrelevant when viewed on the basis of the theory and purpose of the Impact Aid Program. The Impact Aid Program is designed to pay a portion of the local share of the cost of education, as determined under State law. Under this theory the States should, under their own school financing laws, determine the State contribution to local educational agencies, thereby also determining the local share of the cost of education. It is to this local share that Impact Aid attaches.

The Commission recommends that the prohibition in current law against the States' taking Impact Aid payments into consideration in their State aid programs ought to be continued with modifications designed to prevent State actions having the same effect as taking those payments into consideration. Those modifications would prohibit --

(1) a State from requiring local educational agencies to spend Impact Aid funds for any purpose which the State would otherwise fund; and

(2) general purpose units of government from diverting Impact Aid funds from local educational agencies.

With regard for the exception to the prohibition in the case of a State's having an equalization plan, the Commission is recommending specific guidelines for determining when a State is equalized and the degree to which Impact Aid funds may be taken into consideration in equalized States.

These guidelines are intended neither to encourage nor to discourage State equalization efforts. They are designed to be neutral if the States develop and use true equalization plans and to avoid windfalls if windfalls result in a disequalizing effect in truly equalized States.

The Commission found --

(1) that the prohibition against payments to local educational agencies in States without plans to equalize expenditures but which take Impact Aid payments into account as local resources should be continued;

(2) that the current regulations defining "equalize expenditures" allow too much disparity among local educational agencies with the result that States may take Impact Aid into consideration even though they are not truly equalized, defeating the underlying policy for the exception;

(3) that the current regulations permitting States to take Impact Aid into consideration with power equalization are probably inconsistent with the statute in that power equalization deals with tax rates rather than with expenditures, as the law requires;

(4) that the Impact Aid law ought not be used as a matter of Federal policy to effect State policy in favor of or opposed to equalization; and

(5) that any Impact Aid payments are a Federal obligation at the local level under the laws of the States whether or not the States have equalization plans.

On the basis of these findings, the Commission recommends --

(1) THAT THE PROHIBITION AGAINST TAKING IMPACT AID PAYMENTS INTO CONSIDERATION IN STATE AID TO LOCAL EDUCATIONAL AGENCIES BE CONTINUED; THAT THE STATES MAY NOT REQUIRE NOR MAY A LOCAL EDUCATIONAL AGENCY AGREE THAT LOCAL EDUCATIONAL AGENCIES SPEND IMPACT AID FUNDS FOR ANY STATE PURPOSE OR CONSIDER SUCH AN AMOUNT OF LOCAL FUNDS FOR A STATE PURPOSE BASED UPON THE AMOUNT OF AN IMPACT AID PAYMENT TO LOCAL EDUCATIONAL AGENCIES; AND THAT GENERAL PURPOSE UNITS OF GOVERNMENT SHOULD ALSO BE PREVENTED FROM DIVERTING IMPACT AID PAYMENTS FROM DEPENDENT SCHOOL DISTRICTS;

(2) THAT, NOTWITHSTANDING THE PROHIBITION IN RECOMMENDATION (1), STATES WHICH HAVE IN EFFECT PLANS OF STATE AID TO LOCAL EDUCATIONAL AGENCIES WHICH ARE DESIGNED TO EQUALIZE, AND HAVE THE EFFECT OF EQUALIZING, AVERAGE PER-PUPIL EXPENDITURES AMONG SUCH AGENCIES, ARE TO BE PERMITTED TO TAKE IMPACT AID PAYMENTS INTO CONSIDERATION IN DETERMINING THE AMOUNT OF STATE AID TO AN AGENCY RECEIVING SUCH PAYMENTS IF --

(a) THE DISPARITY IN AVERAGE PER-PUPIL EXPENDITURES BY THE LOCAL EDUCATIONAL AGENCY HAVING THE HIGHEST AVERAGE PER-PUPIL EXPENDITURE IN THE STATE DOES NOT EXCEED 110 PERCENT OF THAT HAVING THE LOWEST AVERAGE PER-PUPIL EXPENDITURE IN THE STATE;

(b) THE AVERAGE PER-PUPIL EXPENDITURE IN THE STATE AT LEAST EQUALS THE AVERAGE PER-PUPIL EXPENDITURE IN THE NATION;

(c) THE EFFECT OF TAKING IMPACT AID PAYMENTS INTO CONSIDERATION WOULD NOT BE TO REDUCE THE AVERAGE PER-PUPIL EXPENDITURE BY THE LOCAL EDUCATIONAL AGENCY TO A LEVEL LOWER THAN THE STATE AVERAGE PER-PUPIL EXPENDITURE, AND

(d) THE AMOUNT OF SUCH PAYMENT TAKEN INTO CONSIDERATION MAY NOT EXCEED 50 PERCENT THEREOF;

(3) THAT IN DETERMINING THE LOCAL EDUCATIONAL AGENCY HAVING THE HIGHEST AVERAGE PER-PUPIL EXPENDITURE IN A STATE, ANY LOCAL EDUCATIONAL AGENCY, WHICH (BECAUSE OF UNUSUAL CIRCUMSTANCES) HAS AN UNUSUALLY HIGH AVERAGE PER-PUPIL EXPENDITURE, MAY BE EXCLUDED, EXCEPT THAT THE NUMBER OF LOCAL EDUCATIONAL AGENCIES SO EXCLUDED IN ANY STATE MAY NOT HAVE, IN THE AGGREGATE, AN AVERAGE DAILY MEMBERSHIP EXCEEDING TWO PERCENT OF THE AVERAGE DAILY MEMBERSHIP OF ALL THE LOCAL EDUCATIONAL AGENCIES IN THE STATE; AND

(4) THAT THE PAYMENT TO ANY LOCAL EDUCATIONAL AGENCY HAVING A HEAVILY IMPACTED SCHOOL DISTRICT SHALL NOT BE TAKEN INTO CONSIDERATION.

CHAPTER V -- LEGISLATIVE RECOMMENDATION

The Commission on the Review of the Federal Impact Aid Program hereby recommends that the bill entitled "A BILL TO PROVIDE FOR COMPENSATION FOR LOCAL EDUCATIONAL AGENCIES FOR FINANCIAL BURDENS PLACED UPON THEM BY THE FEDERAL GOVERNMENT" (with the short title "Impact Aid Act"), which bill is composed of the legislative language in this chapter (those parts printed in italics), be considered by the Congress and enacted into law as reflecting the recommendations of the Commission set forth in Chapter IV of this report.

The "Impact Aid Act" would authorize payments by the Federal Government to local educational agencies to compensate them for the financial burden placed upon them by Federal activities. The bill is the legislative recommendation of the Commission on the Review of the Federal Impact Aid Program and is based upon the findings and recommendations of the Commission.

The first recommendation of the Commission is that the Impact Aid Program be continued; therefore, the substantive provisions in sections 2, 3, and 5 form the basis of this legislative recommendation and are modified to the extent necessary to accommodate the policies of the findings and recommendations of the Commission.

The findings and recommendations of the Commission are organized around nine questions as follows:

1) Should the Impact Aid Program be continued?
2) Should there be basic changes in the Impact Aid Program?
3) How should the term "Federal property" be defined?
4) What is the obligation of the Federal Government with respect to the education of children connected with Federal property?
5) Should local educational agencies educating children in attendance at public schools by reason of Federal law or activities be compensated therefor?
6) Which local educational agencies should be eligible for Impact Aid payments?
7) What should be the amount of compensation?
8) How should funds be allocated among local educational agencies when appropriations are insufficient to satisfy all entitlements?
9) Should the States take Impact Aid payments into consideration in their State aid programs?

The findings and recommendations are set out in Chapter IV of the Commission's report and are numerical and alphabetical designations on the basis of these questions. Hereinafter, references to them use that system of designation.

SECTION 1. -- SHORT TITLE

The text of the first section of the bill reads as follows:

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Impact Aid Act."

This section contains the enacting clause required by section 101 of title 1, United States Code, and a short title--the "Impact Aid Act."

Existing law contains no short title for title I of Public Law 874, Eighty-first Congress (hereinafter referred to as "Public Law 874"). Subsequent to the enactment of Public Law 874, a custom developed in the Congress in favor of using short titles in order to facilitate references. In accordance with this custom a short title for the bill is included. This short title is selected as being the most widely recognized title for the program authorized by title I of Public Law 874.

SECTION 2. -- FINDINGS AND DECLARATION OF POLICY; DETERMINATION OF BURDEN

Section 2 of the bill contains statements of findings, a declaration of policy, and a directive to the Secretary of Education, the text of which reads as follows:

Sec. 2(a) The Congress finds --

(1) that under a federal system of government, a program of payments to local educational agencies, similar to that authorized by title I of Public Law 874, Eighty-first Congress (commonly known as the "Impact Aid Program"), is necessary as a means by which the Congress may mitigate the adverse effects upon them which result from the exercise of the power of the Federal Government, thereby limiting the potential for conflict between the necessary and proper exercise of power by the Federal Government and the right of the States (and their subdivisions) to exist, which conflict could arise as a natural consequence of the division of sovereignty in a

federal system of government under the Constitution;

(2) that even though there are changed circumstances which affect the underlying original premises of the Impact Aid Program, those premises have validity at this time and will continue to have validity so long as taxation of real property forms the basis of support for the local share of the cost of the operation of local educational agencies or so long as Federal activities impose a financial burden on those agencies;

(3) that there is no substantial evidence which supports any contention that there are net economic benefits to local educational agencies arising from Federal activities which mitigate the burden imposed upon those agencies by those activities;

(4) that approximately half of the real property tax required to meet the local share of the cost of educating a child in the schools of a local educational agency is derived from taxation of residential property and half from taxation of commercial or other real property; therefore, payments should be made by the Federal Government to local educational agencies on the basis of the use of Federal real property both as a place of employment and as a place of residence and the amount of such payments should be computed to cover all of the local cost of educating a child who both resides on Federal property and resides with a parent employed on Federal property and half of that cost for a child who either resides on Federal property or resides with a parent employed on Federal property; and

(5) that changed circumstances, more nearly complete information, and improved analytical techniques, refinements of the program are possible and should be undertaken.

(b) It is the policy of the United States --

(1) that --

(A) there is an obligation of the Federal Government which arises from both revenue burdens and service burdens placed upon local educational agencies;

(B) the degree to which that obligation requires compensation by the Federal Government be based on a consideration of the burden placed on local educational agencies and the cost of providing an adequate level of education for federally-connected children; and

(C) in determining the amount of compensation to local educational agencies for that burden, if a means of measuring economic benefits to local educational agencies on an objective basis has been devised, the net economic benefit conferred by Federal activities on local educational agencies may be taken into consideration; and

(2) that --

(A) the Federal Government has an obligation to provide financial support for public education under the laws of the States, to the extent that those laws place such an obligation on the owners of real property and to the extent that Federal property exists within those States;

(B) the Federal Government has an obligation to assist in the support of education for the children of its employees without regard for their places of residence;

(C) the Federal Government has an obligation for the education of children living on Federal property; and

(D) the Federal Government has a special obligation with respect to the education of children in attendance at the schools of heavily burdened local educational agencies; and

(3) that the Impact Aid Program is appropriate for meeting, and the following provisions of this Act are designed to fulfill, the obligations described in this subsection.

(c)(1) The Congress hereby recognizes that the United States has a special and unique obligation with respect to the education of Indian children which arises from treaties and other agreements between the United States and Indian tribes and that the Impact Aid Program is one of several means by which the United States can, in part, satisfy that obligation.

(2) It is the policy of the United States that --

(A) the education of Indian children shall be available in such a form and in such a manner as to enable them both to perpetuate their existence as Indian people and to function effectively in the majority society and that decisions regarding the conduct of their education should be made by their parents and the tribes of which they are members; and

(B) to the extent that the education of Indian children is carried out through local educational agencies, as determined by their parents and the tribes of which they are members, children are to have the full rights of citizens under the education laws of the States, as well as the benefits which accrue to them under the treaties and other agreements with the United States.

(d) The Secretary of Education is hereby directed to develop, not later than October 1, 1983, a means of determining, on an objective basis, using empirical evidence, the net fiscal burden placed upon local educational agencies by Federal activities.

This section has four subsections: subsection (a) contains congressional findings; subsection (b) declares the policy of the United States; subsection (c) states a special policy respecting Indian children; and subsection (d) is a directive to the Secretary of Education respecting the determination of fiscal burden on local educational agencies.

FINDINGS

Subsection (a) of section 2, the statement of findings, is a single sentence containing five designated clauses, prefaced by the subject and predicate of the sentence: "The Congress finds --." These designated clauses make findings respecting the constitutional framework surrounding the Impact Aid Program, the validity of the premises underlying the program, the economic benefits resulting from Federal activities, the implications of real property taxes on payments under the program, and refinements in the program. These findings are based upon the findings of the Commission set out in section I of chapter IV of the report and form the basis for the Commission recommendations that the Impact Aid Program be continued (Recommendation I).

Clause (1) of subsection (a) is a finding that a program, such as the Impact Aid Program, is necessary; that it is necessary in order to limit the potential conflct; and that the conflict is the natural consequence of divided sovereignty under a federal system of government.

In clause (1), the Congress finds that, under a federal system of government, a program of payments to local educational agencies is a means by which the Congress may mitigate the adverse effects upon local educational agencies which result from the exercise of the power of the Federal Government; that the existence of such a program would limit the potential for conflict between the power of the national government and the right of the States (and their political subdivisions) to exist; and that this conflict is the natural consequence of the division of political sovereignty between those governments in a federal system under the Constitution.

Clause (1) is derived from Finding (1) of section I of chapter IV of the report.

Clause (2) of subsection (a) is a finding respecting the validity of the premises underlying the Impact Aid Program.

In clause (2), the Congress finds that, even though the circumstances which affect the premises upon which the original Impact Aid Program was based have changed, those premises continue to be valid and will continue to be valid under two circumstances: (1) so long as local educational agencies are reliant upon revenues from taxation of real property for the local share of the cost of operating local educational agencies; and (2) so long as Federal activities impose a financial burden upon local educational agencies.

Clause (2) is derived from Finding (2) of section I of chapter IV of the report.

Clause (3) of subsection (a) is a finding respecting benefits to local educational agencies from Federal activities which may mitigate the adverse effects of the financial burden placed upon local educational agencies.

In clause (3), the Congress finds that there is no substantial evidence which supports any contentions that there are net economic benefits to local educational agencies arising from Federal activities which mitigate the burden imposed on those agencies by those activities.

Clause (3) is derived form Finding (4) of section I of chapter IV of the report.

Clause (4) of subsection (a) is a finding respecting the underlying premises of the Impact Aid Program, to which reference is made in clause (2) of subsection (a): the means by which local educational agencies support their operations and the source of the financial burden imposed by Federal activities. Clause (4) is also related to the finding made in clause (1) of subsection (a), in that the loss of revenue resultant from Federal activities and the cost of educating federally-connected children are burdens caused by the exercise of power by the Federal Government which adversely affects political subdivisions of the States —local educational agencies.

In clause (4), the Congress finds that approximately one-half of the real property tax required to meet the local share of the cost of educating a child in the schools of a local educational agency is derived from taxation of residential property and the other half is derived from taxation of commercial or other real property (places of employment). The implications of that finding are: (1) that the payments to which reference is made in clause (1) under a program based upon the premises described in clauses (2) and (4) should be made on the basis of the use of real property by the Federal Government both as places of residence and as a place of employment; and (2) that the amount of those payments should be computed to cover all of the local share of the cost of educating a child, if that child both resides on, and resides with a parent employed on, Federal property, and one-half of that cost for a child, if that child either resides on, or resides with a parent employed on, Federal property.

Clause (4) is derived from Finding (3) of section I of chapter IV of the report.

Clause (5) of subsection (a) is a finding respecting recommendations for changes in the Impact Aid Program. The finding in clause (2) of subsection (a) makes reference to changed circumstances affecting the underlying premises of the Impact Aid Program. In enacting Public Law 874, the Congress formulated some policies based on assumptions about circumstances for which information and analysis were inadequate. Clause (5) states the reasons for recommending some basic changes in the program.

In clause (5), the Congress finds that refinements in the program are possible, because of changed circumstances, more nearly complete information, and improved analytical techniques; and that such refinements should be undertaken.

Clause (5) is derived from Finding (5) of section I of chapter IV of the report.

Comment on subsection (a). Subsection (a) is designed to provide the framework for the bill regarding the setting in which the substantive provisions thereof were developed. These findings reflect --

(1) a summary of the law on intergovernmental tax immunities and the limitations on the power of the Federal Government;

(2) a review of the underlying premises of the Impact Aid Program, the circumstances affecting the enactment of Public Law 874, of the validity of those premises, and the extent to which circumstances affecting their validity have changed;

(3) an analysis of the only challenge to the validity of an underlying premise of the program;

(4) an examination of the means by which local educational agencies are financed; and

(5) the extent to which changed circumstances require changes in the program.

Subsection (a) also projects the basis for the following sections of the bill and lays the groundwork for determining obligations which accrue from Federal activities, the development of analytical techniques for a measurement of burden, determining the amount of compensation for burden, and relating the Impact Aid Program to the laws of the States regarding public education.

POLICY

Subsection (b) of section 2, the declaration of policy, is a single sentence, containing three major clauses (each of the first two contains internal clauses having designations). The major clauses are prefaced by the declaration: "It is the policy of the United States —." The first of these clauses declares policy with respect to obligations of the United States regarding compensation for burdens imposed on local educational agencies; the second declares policy respecting obligations for the education of federally-connected children; and the third declares that the Impact Aid Program is appropriate for carrying out those policies.

Clause (1) of subsection (b) is a policy declaration respecting the obligations of the United States arising from the Federal burden and the amount of compensation for that burden. Three designated internal clauses state three facets of that policy: they describe the obligation of the United States with respect to revenue and service burdens; the basis for computing the amount of compensation; and the possibility of considering economic benefits in computing that amount.

Clause (A) of subsection (b)(1) is a policy relating to the Federal obligation which arises from Federal burden. In clause (A), the Congress declares it to be the policy of the United States that there is an obligation on the part of the Federal Government which arises from the revenue burden and the service burden placed upon a local educational agency. The term "revenue burden" means the burden caused by loss of revenue resulting from the tax-exempt status of Federal real property. The term "service burden" means the burden caused by the cost of providing education for federally-connected children.

Clause (A) is derived from Recommendation II(A)(1) of the report.

Clause (B) of subsection (b)(1) declares it to be the policy of the United States that the degree to which the Federal obligation requires compensation should be based upon a consideration of the burden placed on a local educational agency and the cost of providing an adequate level of education for federally-connected children. The term "burden" refers to the use of that term in clause (A) of subsection (B)(1); and the term "adequate level of education" looks forward to the use of that term in section 3(b) in connection with determining the amounts to which local educational agencies are entitled.

Clause (B) is derived from Recommendation II(A)(2) of the report.

Clause (C) of subsection (b)(1) declares it to be the policy of the United States that, in determining the amount of compensation to local educational agencies for the burden imposed upon them by Federal activities, the net economic benefit conferred by Federal activities on local educational agencies may be taken into consideration; however, this consideration is contingent upon the development of a device for the measurement of economic benefits to local educational agencies and that measurement must be achieved on the basis of objective data.

Clause (C) is derived from Recommendation II(A)(3).

Clause (2) of subsection (b) relates to the obligations of the United States with respect to public education under the laws of the States and the education of federally-connected children. Clause (2) states policy in six internally designated clauses.

Clause (A) of subsection (b)(2) declares it to be the policy of the United States that the Federal Government has an obligation to provide financial support for public education under the laws of the States. The extent of that obligation is dependent upon two factors: (1) the extent to which the laws of the States place such an obligation on the owners of real property; and (2) the extent to which Federal property exists within the States.

Clause (A) is derived from Finding IV(1); it is also based on the findings stated under statements of Commission findings relating to the relationship with State laws and the definition of "Federal property" which state that "Federal property should, to the extent practicable, be treated like private property" (See Finding III(4)).

It should be noted that the House Committee report on the bill which became Public Law 874 states clearly that it was the original intent of the Congress that Federal property should be treated like private property. This intention is carried through as that of the Commission.

It should also be noted that this policy states an obligation which runs to local educational agencies as institutions and, indirectly, to the children served by those agencies, even though those children may have no immediate Federal connection. This policy is to be implemented under those recommendations relating to local educational agencies with "heavily impacted" school districts. (See section 3(c) of the bill.)

Clauses (B), (C), and (D) of subsection (b)(2) state policy with regard to the Federal obligation for the education of specific categories of federally-connected children.

Clause (B) states that the Federal Government has an obligation to assist in the support of education for the children of its employees without regard for their places of residence. The policy stated in this clause is directly related to that stated in clause (A) of subsection (B)(2), in that employers who own real property have, under the laws of the States, an obligation to pay taxes on that property; and those taxes are used to finance public education.

The policy stated in clause (B) requires a departure from a policy in current law. Under current law, children of Federal employees who go to school in a State different from that in which the property on which their parents are employed is located are not counted as federally-connected. The new policy would require their being counted.

Clause (B) is derived from Finding IV(2) and Recommendation IV(1).

Clause (C) states that the Federal Government has an obligation for the education of children living on Federal property. This policy is a corollary with that stated in clause (B). It does not, however, require a change in current law, in that current law, without exception, counts, as federally-connected children all children residing on Federal property.

Clause (C) is derived from Finding IV(3) and Recommendation IV(1).

Clause (D) states that the Federal Government has a special obligation with respect to the education of children in attendance at the schools of heavily burdened local educational agencies.

This policy is reflected throughout the Commission's recommendations. Special provisions are made for individual determinations of entitlements for those local educational agencies; those entitlements are given priority in payments; and those payments are guaranteed.

Two aspects of this clause should be noted: (1) the use of the word "special" as an adjective modifying "obligation"; and (2) the fact that that obligation runs to all of the children in the schools of those agencies.

The term "heavily burdened local educational agencies" refers to local educational agencies which are eligible for special treatment under subsection (c) of section 3.

Clause (D) is derived from Finding IV(5) and Recommendation IV(3).

Clause (3) of subsection (b) states that it is the policy of the United States that the Impact Aid Program is appropriate for meeting the obligations described in clauses (2) and (3) of subsection (b) and that the following provisions of the bill are designed to fulfill those obligations.

Clause (3) is derived from Finding IV(6).

POLICY WITH RESPECT TO CHILDREN RESIDING ON INDIAN LANDS

Subsection (c) of section 2 is a special policy statement with respect to Indian children residing on Indian lands. This subsection contains two paragraphs: paragraph (1) is a stated recognition by the Congress regarding the education of Indian children, while paragraph (2) states the policy of the United States on the manner of their education.

Subsection (c) is derived from Finding IV(4) and Recommendation IV(2).

Paragraph (1) of subsection (c) states that in paragraph (1) the Congress recognizes (1) that the United States has a special and unique obligation with respect to the education of Indian children and (2) that this obligation arises from treaties (and other agreements) between the United States and Indian tribes and (3) that the Impact Aid Program is one of several means by which the United States can, in part, satisfy that obligtion.

The use of the term "in part" is intended to make clear that, since there are numerous obligations respecting education arising from treaties (many of which are beyond the scope of the Impact Aid Program), this statement of recognition should not be construed as a declaration of total or complete satisfaction of those obligations.

Paragraph (2) of subsection (c) states national policy with respect to the education of Indian children. Paragraph (2) contains two clauses: Clause (A) declares policy on the goals of their education, while clause (B) states policy respecting the rights of Indian children under the laws of the States.

Clause (A) of paragraph (2) declares it to be the policy of the United States (1) that the education of Indian children shall be available in such a form and in such a manner as to enable them both to perpetuate their existence as Indian people and to function effectively in the majority society, and (2) that decisions regarding the conduct of their education should be made by their parents and the tribes of which they are members.

Clause (B) of paragraph (2) declares it to be the policy of the United States that, to the extent that the education of Indian children is carried out through local educational agencies (as determined by their parents and the tribes of which they are members), those children are to have the full rights of citizens under the education laws of the States, as well as the benefits which accrue to them under the treaties (and other agreements) with the United States.

ECONOMIC IMPACT MODEL

Subsection (d) of section 2 is a directive to the Secretary of Education to develop a means of determining, on an objective basis, using empirical evidence, the net fiscal burden placed upon local educational agencies by Federal activities. This directive is to be completed not later than October 1, 1983. This subsection is made necessary by the finding stated in clause (3) of subsection (a) and the policy declared in clause (c) of subsection (b)(1). These provisions arise from the contention, on the part of the Secretary of Education, that there are net fiscal benefits resulting from Federal activities--a contention based upon an unsupported assumption. The development of a means of measuring Federal burden would provide a basis for operating the program without unnecessary or inappropriate assumptions regarding the existence or degree of burden.

Subsection (d) does not direct the Secretary to develop a particular means of measuring burden; nor does it set any standards or criteria for the device developed; however, the Commission's report does contain a description of an economic model developed by the Commission. Unless a better model can be developed, it is expected that the principles used in the Commission model would be used by the Secretary.

Subsection (d) is derived from Recommendation II(B).

SECTION 3. -- PAYMENTS TO LOCAL EDUCATIONAL AGENCIES WITH RESPECT TO CHILDREN WHO RESIDE ON FEDERAL PROPERTY OR WHOSE PARENTS ARE EMPLOYED ON FEDERAL PROPERTY

Section 3 of the bill authorizes a program of payments to local educational agencies which provide free public education to federally-connected children. This section contains four subsections as follows: subsection (a) creates entitlements for local educational agencies educating federally-connected children (and determines the conditions for their eligibility); subsection (b) sets out a formula for determining the amounts of those entitlements; and subsections (c) and (d) create two exceptions to that formula for local educational agencies with heavily impacted school districts.

The text of section 3 is as follows:

Sec. 3(a)(1) Each local educational agency shall be entitled, under this section, to a payment for each fiscal year with respect to each child who, during such year, is in attendance at the schools of such agency and, while so in attendance, resides on Federal property.

(2)(A) Each local educational agency shall be entitled, under this section, to a payment for each fiscal year with respect to each child who, during such year, is in attendance at the schools of such agency and, while so in attendance, resides with a parent employed on Federal property.

(B) For the purposes of this paragraph, any child who —

(i) has a parent on active duty in the uniformed services (as defined in section 101 of title 37, United States Code), or

(ii) resides on Indian lands,

shall be deemed to have a parent employed on Federal property.

(3) No local educational agency shall be eligible to receive a payment under this section for any fiscal year unless the number of children in attendance at its schools for that year who are described in paragraphs (1) and (2) is at least ten and constitutes at least three per centum of the total number of children in attendance at its schools for that year, except that any local educational agency at the schools of which there are in attendance at least 400 children so described shall be so eligible.

(4) For the purposes of this Act —

(A) the term "Federal property" means any real property in any State which is not subject to taxation by the States or their political subdivisions by reason of Federal law;

(B) the term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public elementary and secondary education through grade 12 in a county, township, or other school district located within a State; and such term also includes any State agency which directly operates and maintains facilities for providing free public elementary and secondary education through grade 12;

(C) the term "free public education" means education which is provided at public expense, under public supervision and direction, without tuition charge, and which is provided as elementary or secondary school education;

(D) the term "State" means one of the fifty States in the United States; and

(E) the term "Indian lands" means real property held in trust by the United States for individual Indians or Indian tribes and real property held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States.

(b)(1) The amount of the payment to which any local educational agency shall be entitled for any fiscal year shall be equal to the total number of children described in paragraphs (1) and (2) of subsection (a)

for whom such agency provided free public education during such year multiplied by 50 per centum of the Federal contribution rate for such agency for such year.

(2) The Federal contribution rate for any local educational agency for any fiscal year shall be an amount equal to the difference between --

(A) the amount per pupil necessary to provide an adequate level of education in the schools of such an agency, during such year; and

(B) the amount per pupil contributed for such year to such agency by the State in which it is located for the maintenance and operation of its schools, except that the Federal contribution rate for any local educational agency in any State shall not be less than 50 per centum of the average per-pupil expenditure in that State.

(3)(A) For the purposes of this section, the amount per pupil necessary to provide an adequate level of education in the schools of a local educational agency in a State for any fiscal year shall be equal to the average per-pupil expenditure for that year in that State or in all the States, whichever is greater.

(B) For the purposes of this Act --

(i) the term "average per-pupil expenditure" in a State for any fiscal year shall be the aggregate current expenditures during that year, of all local educational agencies in that State divided by the aggregate number of children in average daily attendance for *whom such agencies provided free public education during that year;*

(ii) the term "current expenditures" means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under the Elementary and Secondary Education Act of 1965; and

(iii) the number of children in attendance at the schools of a local educational agency shall be determined on the basis of average daily attendance of such children in such schools and, subject to such regulations as may be necessary for the purposes of this section, average daily attendance shall be determined in accordance with the appropriate State law, and such regulations shall permit the use of data based on average daily membership in lieu of average daily attendance when appropriate, and shall provide for equitable treatment between local educational agencies when children are in attendance at the schools of a local educational agency under agreements between agencies concerning tuition payments for such children.

(C) Notwithstanding subparagraph (A), in cases where the children in attendance at the schools of a local educational agency in any State

who are described in paragraphs (1) and (2) of subsection (a) have educational needs which are so substantially different from those of children in public schools, in general, as to require, in order to meet the educational needs of the children so described, an expenditure of funds greater than the average per-pupil expenditure in that State or in all the States (as the case may be), the amount necessary to provide an adequate level of education for such children in the schools of such agency shall be adjusted accordingly. Adjustments under this subparagraph shall —

(i) be based upon criteria established for such purpose;

(ii) be the result of a petition therefor by one or more local educational agencies for a specific fiscal year; and

(iii) include adequate consideration of the cost to a local educational agency of preparing for, and submitting, an application under this title.

(D) For the purposes of subparagraph (C), children who have parents in the uniformed services, those who live on Indian lands, and those who live on low-rent public housing property shall be deemed to have educational needs requiring substantially greater expenditures of funds than that for which provision is made in subparagraph (A).

(4)(A) If any local educational agency receives a payment in-lieu of taxes from any Federal agency (other than a payment under this Act) with respect to any Federal property in its school district for any fiscal year, an amount equal to such payment shall be deducted from the entitlement computed under this subsection with respect to that agency

for that fiscal year.

(B) If any local educational agency receives payments from the taxation of interests in Federal property for any fiscal year, an amount equal to such payments shall be deducted from the entitlement computed under this section with respect to that agency for that fiscal year.

(c)(1)(A) In any case where the ability of a local educational agency to provide an adequate level of education for the children in attendance at its schools is seriously impaired by reason of the existence, within the school district of such agency, of a substantial area of Federal property, the amount of the entitlement of that agency shall be determined in accordance with criteria, established for the purposes of this paragraph, designed to insure that sufficient funds are available to such agency to enable such agency to provide such a level of education for such children.

(B) The criteria established for the purposes of this paragraph shall make provision to insure that the funds available to a local educational agency in a State are at least equal to the product of —

(i) the average per-pupil expenditure in that State or in all the States, whichever is greater; and

(ii) the number of children in attendance at the schools of such agency.

Such criteria shall take into consideration such additional factors as the amount of revenues which would be available to a local educational agency if the Federal property in its school district were taxed at the same rate as other similar real property in its school district is actually being taxed, the educational needs of the children in attendance at the schools of a local educational agency, and any unusual geographical features of the school district of a local educational agency which increase the cost of education for the local educational agency.

(C) A presumption shall lie in favor of a determination of eligibility under subparagraph (A) for any local educational agency if the geographical area of the Federal property in the school district of that local educational agency which has, in the past, been subject to State or local taxation and has been acquired by the Federal Government (or otherwise been exempted from such taxation by operation of Federal law) constitutes at least 10 per centum of the total geographical area of that school district. Such a presumption may be rebutted by conclusive evidence (1) that sufficient funds are available to the local educational agency to provide an adequate level of education for the children in attendance at its schools or (2) that, if there is an insufficiency of funds, such insufficiency is not the result of the tax-exempt status of the Federal property in its school district, or (3) that the local educational agency is being substantially compensated for the loss of revenue resulting from the existence of such Federal property by increases in revenue accruing to such agency from the Federal activities carried out with respect to such property.

(2)(A) In any case where the number of children described in paragraphs (1) and (2) of subsection (a) in attendance at the schools of a local educational agency in a State constitutes such a substantial *percentage of the total number of children in attendance at such schools that the amount of the payment such agency would receive on the basis of an entitlement computed under subsection (b) would be insufficient to enable such agency to provide an adequate level of education for the children in attendance at its schools, the entitlement of that agency shall be determined in accordance with criteria, established for the purposes of this paragraph, designed to insure that sufficient funds are available to such agency to enable such agency to provide such a level of education for such children.*

(B) The criteria established for the purposes of this paragraph shall make provision for --

(i) establishing, with respect to the children in attendance at the schools of the local educational agency, an amount necessary to provide such children an adequate level of education in accordance with subparagraphs (C) and (D) of subsection (b)(3);

(ii) a consideration of the effort the local educational agency is making to raise revenue from its local sources;

(iii) a consideration of the resources available to the local educational agency from that State and from other Federal sources of funds; and

(iv) insuring that the per-pupil expenditure of the local educational agency is not less than that of other local educational agencies in that State having school districts which are generally comparable with that of such agency.

(3) Any local educational agency shall be deemed to meet the requirement of subparagraph (A) if --

(i) the number of children in attendance at its schools who are described in both paragraph (1) and paragraph (2) of subsection (a) constitutes at least 20 per centum of the total number of children in attendance at its schools; or

(ii) the number of such children described both in paragraph (a) and paragraph (2) of subsection (a), plus one-half of the number of such children who are described in either paragraph (1) or paragraph (2) of such subsection (a) constitutes at least 25 per centum of the total number of children in attendance at its schools.

(d) If, in accordance with procedures and criteria, there is a determination that any requirement in this section which, when applied to any local educational agency, would defeat the purposes of this section, such requirement shall be waived for the benefit of that agency. Such criteria shall be based upon the findings and policies stated in section 2 and shall take into consideration hardships resulting from the failure to pay the full amount to which a local educational agency is entitled to be paid under this title.

This section is the equivalent to section 3 in existing law and is based, unless otherwise noted herein, upon the same principles as those upon which the current section 3 is based. The new section 3 differs from the existing section 3, in that it includes, as integral parts thereof, necessary definitions of terms.

ENTITLEMENTS AND ELIGIBILITY

Subsection (a) of section 3 creates entitlements and establishes eligibility conditions for payments to local educational agencies which provide education for children connected with Federal property. This subsection contains four paragraphs: (1) and (2) create entitlements for local educational agencies which provide education for children who reside on Federal property and children whose parents are employed on Federal property; paragraph (3) sets the conditions for eligibility for payments; and paragraph (4) defines the terms used in subsection (a).

The structure of subsection (a), as paragraph (1) gives evidence, differs from the provisions in current law. Current law creates two categories of federally-connected children: (A) those who both reside on, and reside with a parent employed on, Federal property (the so-called "A" children); and (B) those who either reside on, or reside with a parent employed on, Federal property (the so-called "B" children). The structure of paragraphs (1) and (2) also creates two categories of such children; however the two categories are (1) those who reside on Federal property; and (2) those who reside with a parent employed on Federal property. A child who is the equivalent of an "A" child is to be counted twice, while one who is the equivalent of a "B" child is to be counted once. Thus, the current practice of distinguishing between "A's" and "B's" would not continue. The policy for this structural change is derived from a finding made by the Commission in its Interim Report that there is no rational basis for a distinction between "A's" and "B's." The children described in paragraphs (1) and (2) are referred to as "federally-connected."

The new structure is required under the policies stated in Recommendations IV(1) and VII(1).

ENTITLEMENTS WITH RESPECT TO FEDERALLY-CONNECTED CHILDREN

Paragraphs (1) and (2) of section 3(a) of the bill are comparable with subsections (a) and (b) of section 3 in current law. Paragraphs (1) and (2) do not contain serveral elements included in subsections (a) and (b) of current law:

(1) References to the location of Federal property in clause (1) of subsection (a) and clause (2) of subsection (b) in current law are not included in the bill because of the policy stated in clause (B) of section 2(b)(2) of the bill regarding the obligation of the Federal Government with respect to the education of its employees;

(2) the use of the term "average daily attendance" in the two paragraphs is omitted in favor of the term "in attendance," which is then defined for the purposes of the entire section in clause (iii) of section 3(b)(3)(B) of the bill;

(3) the language in both subsections (a) and (b) of current law referring to uniformed services is the equivalent to clause (i) of section 3(a)(2)(B) of the bill;

(4) the language of the second sentence of section 3(a) of current law (relating to children on Indian lands) is the equivalent to clause (ii) of section 3(a)(2)(B) of the bill; and

(5) the second sentence of section 3(b) of current law (relating to refugee children) is omitted; but the equivalent thereof is included in the new section 4 of the bill.

Paragraph (1) of subsection (a) provides that each local educational agency is to be entitled (under section 3) to a payment for each fiscal year with respect to each child who (during that fiscal year) is in attendance at the schools of such agency and who (while so in attendance) resides on Federal property.

Paragraph (2) of subsection (a) relates to children whose parents are employed on Federal property. This paragraph contains two subparagraphs: subparagraph (A) is parallel with paragraph (1), while subparagraph (B) contains two exceptions for special circumstances.

Subparagraph (A) of paragraph (2) provides that each local educational agency is to be entitled (under section 3) to a payment for each fiscal year with respect to each child who (during that fiscal year) is in attendance at the schools of such agency and (while so in attendance) resides with a parent employed on Federal property.

Subparagraph (B) of paragraph (2) relates to two types of Federal connection which do not fit the general pattern of Federal employment: (1) children of military personnel who may not be working on real property (such as a ship); and (2) children residing on Indian lands whose parents may be engaged in agriculture rather than work for the Federal Government. This subparagraph provides that, for the purposes of paragraph (2), such children shall be deemed to have a parent employed on Federal property.

Subparagraph (B) contains two clauses describing those children: clause (i) specifies a child who has a parent on active duty in the uniformed services; and clause (ii) specifies a child who resides on Indian lands.

The term "uniformed services" is defined in section 101 of title 37, United States Code.

The term "Indian lands" is defined in clause (E) of paragraph (4) of subsection (a).

ELIGIBILITY FOR PAYMENTS

Paragraph (3) of subsection (a) states the conditions under which local educational agencies are to be eligible for payments under section 3. This paragraph provides that no local educational agency is to be eligible to recieve a payment under section 3 for any fiscal year unless the number of children in attendance at its schools for that year who are described in paragraphs (1) and (2) of subsection (a) (federally-connected children) is at least ten and that number constitutes at least three percent of the total number of children in attendance at the schools of that agency for that year. Paragraph (3) contains an exception to the three percent requirement: if the number of federally-connected children in its schools is at least 400.

Paragraph (3) of section 3(a) of the bill is the equivalent of section 3(c) in current law. Such paragraph (3) is, in substance, identical with paragraphs (1) and (2)(A)(i) of section 3(c) in current law. The remainder of the provisions of section 3(c) is omitted. They are --

(1) division (ii) of section 3(c)(2)(A), which makes special provision for the eligibility of local educational agencies which have been eligible, but fail in any year to meet the three percent eligibility requirement (the so-called "Purtell Amendment");

(2) division (iii) of section 3(c)(2)(A), which allows the waiver of that eligibility requirement; and

(3) subparagraph (B) of seciton 3(c)(2), which is a special eligibility requirement for refugee children.

The first two special eligibility provisions would be eliminated in order to simplify eligibility requirements. These two provisions are subsumed in the new section 3(d) of the bill.

The special provisions for refugee children is made unnecessary by reason of new section 4 of the bill.

DEFINITIONS

Paragraph (4) of subsection (a) contains necessary definitions for the terms used in section 3. Five terms are defined: "Federal property"; "local educational agency"; "free public education"; "State"; and "Indian lands."

Clause (A) of paragraph (4) defines the term "Federal property" as any real property in any State which is not subject to taxation by the States or their political subdivisions by reason of Federal law.

Clause (A) is based upon Recommendation III.

Clause (A) is the equivalent of section 403(1) in current law which defines the term "Federal property." The new definition is a simplification of the current definition and differs from current law in that --

(1) the property must be located in a State, as defined in clause (D) of paragraph (4) (which does not include the District of Columbia nor any of the outlying areas);

(2) current law considers Federal property to continue to be such for one year after it has been transferred, while the new definition does not;

(3) the current definition includes Air Force flight training schools at airports owned by the States (or their subdivisions), while the new definition does not; and

(4) current law does not include property owned by the Postal Service, while the new definition does include that property if it is not subject to taxation.

With regard to taxable interests in Federal property, the fact that a State may tax an interest in Federal property does not defeat its status as Federal property; however, revenues from taxing such interest are deductible under section 3(b)(4) of the bill.

Clause (B) of paragraph (4) defines the term "local educational agency" as a board of education (or other legally constituted local school authority) having administrative control and direction of free public elementary and secondary education through grade 12 in a county, township, or other school district located within a State. The term "local educational agency" also includes any State agency which directly operates and maintains facilities for providing free public elementary and secondary education through grade 12.

This definition is the same as that in section 403(6)(A) in current law.

Clause (C) of paragraph (4) defines the term "free public education" as education which is provided at public expense, under public supervision and direction, without tuition charge, and which is provided as elementary or secondary school education.

This is the same definition as is in section 403(4) in current law.

Clause (D) of paragraph (4) defines the term "State" as meaning any one of the fifty States in the United States.

This definition differs from current law in that it excludes the District of Columbia and the outlying areas.

Clause (E) of paragraph (4) defines the term "Indian lands" as real property either held in trust by the United States for individual Indians or Indian tribes or held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States.

This definition is derived from section 403(1)(A) in current law.

AMOUNTS OF ENTITLEMENTS

Subsection (b) of section 3 determines the amounts of the entitlements created under subsection (a). This subsection has four paragraphs: paragraph (1) states that the amount of the payments is based upon a "Federal contribution rate"; paragraph (2) determines the means by which the Federal contribution rate is computed using "adequate level of education" as a standard; paragraph (3) controls the manner in which an adequate level of education is determined; and paragraph (4) provides for reduction of the amounts of entitlements.

Subsection (b) and subsection (c) of section 3 should be considered together. While subsection (b) contains a rule for determining the amounts of entitlements, subsection (c) creates exceptions to that rule. These two subsections reorganize, and are the equivalent of, sections 2 and 3(d) of current law. The following table indicates the comparability of those provisions between current law and the bill.

Current Law	Proposed
Sec. 2	Sec. 3(c)(1)
Sec. 3(d)(1)	Sec. 3(b)(1)
Sec. 3(d)(2)(B)	Sec. 3(c)(2)
Sec. 3(d)(2)(C) and (D)	Sec. 3(b)(3)(C) and (D)
Sec. 3(d)(3)	Sec. 3(b)(2), (3)(A) and (B)
No provision	Sec. 3(b)(4)

COMPUTATION OF AMOUNT OF ENTITLEMENT

Paragraph (1) of subsection (b) provides that the amount of the payment to which any local educational agency is to be entitled for any fiscal year is to be equal to the total number of federaly-connected children for whom that local educational agency provided free public education during that year multiplied by 50 percent of the Federal contribution rate (FCR) for that local educational agency for such year.

Paragraph (1) is the same as paragraph (1) of section 3(d) in current law, except that --

(1) the term "Federal contribution rate" (FCR) is used instead of "local contribution rate" (LCR); and

(2) a uniform 50 percent of FCR is used for computation of entitlements instead of the variable percentages used in current law.

These changes reflect the policies of Recommendations VII(1)(a), (b), and (c).

It should be noted that the "tier" system of payments in current law uses the variable percentages of LCR as a means of setting priorities in making payments. Since Recommendation VIII states a policy inconsistent with the "tier" system, these variable percentages are not necessary.

Common practice has been to use clause (A) of section 3(d)(1) of current law as a definition of a heavily impacted school district. Provision for such a definition is made in section 3(c) of the bill.

Paragraph (1) is derived from Recommendation VII(1)(a) and (b).

Paragraphs (2) and (3) of subsection (b) are the equivalent of paragraph (3) of section 3(d) in current law.

FEDERAL CONTRIBUTION RATE

Paragraph (2) of subsection (b) provides that the Federal contribution rate for any local educaitonal agency for any fiscal year is to be an amount equal to the difference between an amount determined to be necessary to provide an adequate level of education and an amount contributed to that agency by the State. These amounts are calculated on a per-pupil basis; and the State contribution must be for the purpose of assisting in the maintenance and operation of the local educational agency's schools. This paragraph contains an exception to the general rule on computing FCR: FCR for any local educational agency in any State may not be less than 50 percent of the average per-pupil expenditure in that State.

This provision is substantially different from its comparable provision in current law in that the "comparable school distict" method for computing LCR would not be continued and that the approach for the present minimum LCR's (State or national average per-pupil expenditures) would become the basis for computing FCR.

The special provision for computing LCR in outlying areas and single school district States is omitted, as being unnecessary in light of the changes in the method for computing entitlements and in the definition of State.

Paragraph (2) is derived from Recommendation VII(1)(d), (e), and (f).

ADEQUATE LEVEL OF EDUCATION

Paragraph (3) of subsection (a) provides for determining the amount necessary for an adequate level of education. This paragraph has two subparagraphs: subparagraph (A) contains the formula for determining the amount; and subparagraph (B) defines or clarifies the terms used in that formula.

Subparagraph (A) of paragraph (3) provides that, for the purposes of section 3, the amount per pupil necessary to provide an adequate level of education in the schools of a local educational agency in a State for any fiscal year is to be equal to the average per-pupil expenditure for that year in that State or in all the States, whichever is greater.

This subparagraph is the equivalent of the minimum LCR provision in section 3(d)(3) in current law.

Subparagraph (A) is derived from Recommendation VII(1)(g).

Subparagraph (B) of paragraph (3) defines the terms "average per-pupil expenditure" and "current expenditures," and it permits the use of average daily membership, as well as average daily attendance.

This subparagraph is the equivalent of subparagraph (C) of section 3(d)(3) in current law.

Clause (i) of subparagraph (B) defines the term "average per-pupil expenditure" for the purposes of section 3. Such term, when used in connection with a State for any fiscal year, is to be the quotient obtained by dividing current expenditures by the number of children in average daily attendance at schools. The aggregate current expenditures of all local educational agencies in the State are divided by the aggregate number of children in average daily attendance for whom such local educational agencies provide free public education in the year for which the calculation is made.

This definition is derived from subparagraph (C)(i) in current law.

Clause (ii) of subparagraph (B) defines "current expenditures" as meaning expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges and net expenditures to cover deficits for food services and student body activities. The definition expressly excludes expenditures for community services, capital outlay, and debt services; also excluded are expenditures from funds granted under the Elementary and Secondary Education Act of 1965.

This clause is derived from section 403(5) in current law.

Clause (iii) of subparagraph (B) makes provision for determining the numbers of children in attendance at schools and average daily attendance. This clause provides that the number of children in attendance at the schools of a local educational agency is to be determined on the basis of average daily attendance of children in such schools. It also provides that average daily attendance is to be determined in accordance with the appropriate State law; however, such determination is to be subject to such regulations (promulgated by the Secretary of Education) as may be necessary for the purposes of section 3. Clause (iii) requires that such regulations permit the use of data based on average daily membership in lieu of average daily attendance when appropriate. Clause (iii) also requires that such regulations provide for equitable treatment between local educational agencies when children are in attendance at the schools of a local educational agency under agreements between local educational agencies concerning tuition payments for such children.

Clause (iii) is based upon section 403(10) in current law.

Subparagraph (C) of paragraph (3) provides for exceptions in determining the amounts necessary for providing an adequate level of education for some categories of federally-connected children.

The first sentence of subparagraph (C) provides that in cases where federally-connected children in attendance at the schools of a local educational agency in any State have educational needs which are so substantially different from the needs of children in public schools, in general, as to require, in order to meet those needs, an expenditure of funds greater than that provided in subparagraph (A) of paragraph (B), subparagraph (C) requires that the amount determined necessary to provide an adequate level of education for that category of children in the schools of that agency be increased accordingly.

This subparagraph (together with the following subparagraph) is based upon the concepts underlying subparagraphs (C) and (D) of section 3(d)(2) in current law (which subparagraphs make special upward adjustments in the LCR for children living on Indian lands and handicapped military dependents). The new language permits such adjustments whenever costs of education require special treatment of a group or category of children.

The categories selected for adjustments under this subparagraph may be determined on the basis of the type of property with which children are connected or on the basis of educational needs.

In some instances, children in individual school districts may merit a special adjustment if unusual circumstances in that district cause increased costs of education. It is expected that children in many heavily impacted school districts would qualify for adjustments under this subparagraph determined on the basis of individual local educational agencies.

The second sentence of subparagraph (C) requires that adjustments under that subparagraph --

(1) be based upon criteria established specifically for the purpose of making such adjustments;

(2) be the result of a petition for an adjustment by one or more local educational agencies for a specific fiscal year; and

(3) include adequate consideration of the cost to a local educational agency of preparing for, and submitting, an application for a payment on a section 3 entitlement.

Application costs under clause (iii) of subparagraph (C) are included because of the considerable costs which may be incurred by a local educational agency in petitioning for an adjustment and gathering the information necessary to support the petition, which information may include the results of an economic impact study.

It should be noted that actions by the Secretary (or failures to act) are subject to review under section 5(e) of the bill.

Subparagraph (C) is based upon Recommendations in section IV and Recommendation VII(2).

Subparagraph (D) of paragraph (3) makes a statutory determination that certain categories of children are within the exception set out in subparagraph (C) of paragraph (3). In the cases of children who have parents in the uniformed services, those who live on Indian lands and those who live on low-rent public housing property, subparagraph (B) requires that they be deemed to have educational needs of the type described in subparagraph (C) and that the amount necessary to provide an adequate level of education be adjusted upward.

DEDUCTIONS FOR CERTAIN REVENUES

Paragraph (4) of subsection (b) provides for deducting certain revenues from the entitlements of certain local educational agencies. This paragraph contains two subparagraphs: subparagraph (A) relates to deductions for in-lieu of taxes payments; and subparagraph (B) relates to deductions for taxable interests in Federal property.

Paragraph (4) is based upon Recommendation VII(6).

Subparagraph (A) of paragraph (4) requires that an amount be deducted from the entitlement of a local educational agency computed under subsection (b) for any fiscal year which is equal to the amount that agency actually receives as an in-lieu of taxes payment from any Federal agency with respect to any Federal property in the school district of that agency for that fiscal year.

Subparagraph (B) of paragraph (4) requires that an amount be deducted from the entitlement of a local educational agency computed under subsection (b) for any fiscal year which is equal to the amount that agency actually receives from the taxation of interests in Federal property for that fiscal year.

EXCEPTIONS FOR HEAVILY BURDENED LOCAL EDUCATIONAL AGENCIES

Subsection (c) of section 3 provides for two exceptions to the manner in which entitlements are computed under subsection (b). Subsection (c) treats these exceptions in two paragraphs: paragraph (1) relates to local educational agencies in the school districts of which there is extensive Federal property, and paragraph (2) relates to local educational agencies having high percentages of federally-connected children in attendance at their schools.

LOCAL EDUCATIONAL AGENCIES WITH SCHOOL DISTRICTS WITH SUBSTANTIAL FEDERAL PROPERTY

Paragraph (1) of subsection (c) sets the conditions for special treatment of local educational agencies which are impaired in their ability to provide an adequate level of education for the children in attendance at their schools because of the existence of extensive Federal property in their school districts. This paragraph contains three subparagraphs: subparagraph (A) states the conditions for eligibility for special treatment and directs that those eligible be given special treatment in accordance with criteria established for such purpose; subparagraph (B) sets the standards for those criteria; and subparagraph (C) creates a presumption of eligibility in favor of local educational agencies having school districts having a substantial part of their area falling within the definition of "Federal property."

Paragraph (1) is comparable with section 2 of current law. Substantively, paragraph (1) differs from the current section 2 by recognizing that mere exemption of real property from taxation may constitute such a substantial burden upon a local educational agency that it may not be able to provide the children in its schools an adequate level of education.

Subparagraph (A) of paragraph (1) requires that the entitlements of a local educational agency be determined in accordance with criteria established specifically for the purposes of paragraph (1) of subsection (c) if the ability of that local educational agency to provide an adequate level of education for all the children in attendance at its schools is seriously impaired by reason of the existence, within the school district of that local educational agency, of a substantial area of Federal property. The criteria so established are to be designed to insure that sufficient funds are available to the agency to enable such agency to provide an adequate level of education for those children.

Any local educational agency may make application under paragraph (1); and it is to be eligible if it can show that the existence of Federal property in its school district is so substantial that, because of its tax-exempt status, sufficient funds are not available to the local educational agency to enable it to provide the children in its schools an adequate level of education.

As a part of any such showing it is expected that, if possible, a local educational agency may conduct an economic impact study (of the type required to be developed under section 2(d) of the bill) to measure the extent of the Federal burden.

Subparagraph (B) of paragraph (1) controls the criteria required to be established under subparagraph (A).

The first sentence of subparagraph (B) sets a minimum for such criteria. Such criteria are to make provision to insure that the funds available to a local educational agency in a State are at least equal to the product of an average per-pupil expenditure and a number of children described in clauses (i) and (ii) of subparagraph (B).

Clause (i) of subparagraph (B) sets the figure for average per-pupil expenditures for a local educational agency as being not less than either the average per-pupil expenditure for the State in which it is located or the national average per-pupil expenditure.

Clause (ii) of subparagraph (B) provides that the number of children counted for determining the minimum entitlement is to be all of the children in attendance at the schools of the local educational agency.

The second sentence of subparagraph (B) provides additional factors which are to be taken into consideration in establishing criteria under paragraph (1). Such criteria are to take into consideration at least such additional factors as —

(1) the amount of revenue which would be available to a local educational agency if the Federal property in its school district were taxed at the same rate as other similar real property in its district is actually being taxed;

(2) the educational needs of the children in attendance at the school of a local educational agency; and

(3) any unusual geographical features of the school district of a local educational agency which increase the cost of education for the local educational agency.

Existing law requires that two factors be taken into consideration in determining the amount of a payment under section 2:

(1) the amount of the continuing Federal responsibility for the additional financial burden placed on the agency; and

(2) the amount the local educational agency would have derived from the property if it were taxed.

The second sentence of paragraph (1)(B) does not continue the first factor, since this factor is to be taken into consideration in determining the agency's eligibility under subparagraph (A) of paragraph (1).

Two new factors are added by the second sentence of subparagraph (B), both of which relate to the cost of education: (1) educational needs, and (2) unusual costs caused by unusual geographical features of the school district.

If an economic impact study is conducted in the school district, the amount of the Federal burden measured by that study would be a factor.

Subparagraph (C) of paragraph (1) creates a presumption of eligibility in favor of any local educational agency in the district of which at least ten percent of the real property is Federal property, and provides for a rebuttal to that presumption, in the case of any local educational agency.

Existing law (clauses (1), (2), and (3) of section 2(a)) contains three requirements for eligibility for section 2 payments:

(1) the United States must have acquired real property in the local educational agency's school district (after 1938) with an assessed valuation at the time of acquisition amounting to at least 10 percent of the valuation of all the real property in that district;

(2) the acquisition must have placed a substantial and continuing financial burden; and

(3) the benefit of the Federal activities may not substantially compensate the local educational agency for the Federal burden.

Subparagraph (C) of paragraph (1) in the bill is the equivalent of these three clauses of the current section 2(a). The equivalent of the first factor becomes a threshold for the creation of a presumption of eligibility which may be rebutted by the equivalents of the other two factors.

The first sentence of subparagraph (C) provides that, if the geographical area of the Federal property in the school district of a local educational agency has, at some time, been subject to State or local taxation and has been acquired by the Federal Government, and constitutes at least ten percent of the total geographical area of the school district of that agency, then a presumption shall lie in favor of a determination that it is eligible for special treatment under paragraph (1).

This threshold for creating a presumption of eligibility differs from the first eligibility factor in existing law in three respects:

(1) the 10 percent factor is geographical rather than a percentage of assessed valuation;

(2) the property concerned is "Federal property" as defined in section 3, rather than real property acquired by the United States; and

(3) current law requires that the property shall have been acquired after 1938, the new language would have no date but would provide that the property should, at some time, have been subject to State taxation and have been exempted therefrom by reason of its becoming Federal property.

The second sentence of subparagraph (C) provides that the presumption created by the first sentence thereof may be rebutted only by conclusive evidence that --

(1) sufficient funds are available to the local educational agency to provide an adequate level of education for all the children in attendance at its schools; or

(2) if there is an insufficiency of funds to provide such a level of education, such insufficiency is not the result of the tax-exempt status of the Federal property in its school district; or

(3) the local educational agency is being substantially compensated for the loss of revenue resulting from the existence of such Federal property by increases in revenue accruing to such agency from Federal activities carried out with respect to such property.

The third of these possible rebuttals is the equivalent of the third eligibility factor in existing law. This rebuttal can only be carried forward by conducting an economic impact study with respect to the

Federal activities concerned. Such a study is to be conducted by using a model of the type directed to be developed in section 2(d) of the bill.

Paragraph (1) is derived from Recommendation VII(3).

LOCAL EDUCATIONAL AGENCIES WITH SUBSTANTIAL PERCENTAGES OF FEDERALLY-CONNECTED CHILDREN IN ATTENDANCE AT THEIR SCHOOLS

Paragraph (2) of subsection (c) provides for special treatment for local educational agencies in the schools of which there is in attendance a high percentage of federally-connected children. Paragraph (2) has a structure which is parallel with that of paragraph (1) of subsection (c) in that subparagraph (A) provides for establishing the eligibility of local educational agencies for special treatment; subparagraph (B) sets standards for criteria for special treatment; and subparagraph (C) deems certain local educational agencies to be eligible.

Paragraph (2) is comparable with subparagraph (B) of section 3(d)(2) in current law. That subparagraph authorizes section 3 entitlements to be increased for local educational agencies having in attendance at their schools a number of federally-connected children which is at least 50 percent of the total number of children in attendance at their schools. In the case of any such agency, if its regular section 3 entitlement (plus other funds available to the local educational agency) is less than the amount necessary to enable that agency to provide a level of education equivalent to that maintained by local educational agencies in the same State with comparable school districts, the Secretary is to increase the entitlement of that agency to the extent necessary to enable that agency to provide such a level of education.

The amount to which an entitlement may be increased is not to exceed the per-pupil cost of providing education in those comparable school districts multiplied by the number of federally-connected children in the schools of the local educational agency, minus the amount, per pupil, of State aid to that agency.

In accordance with Recommendation VII(4), this narrow, seldom used provision in existing law would be expanded into a major exception to the regular section 3 formula.

Subparagraph (A) of paragraph (2) provides that any local educational agency is to have its entitlement under section 3 determined in accordance with criteria established for the purposes of paragraph (2) of subsection (c) if the number of federally-connected children in attendance at the schools of such agency constitutes such a substantial percentage of the total number of children in attendance at such schools that the amount of the payment such agency would receive on the basis of its entitlement, under subsection (b), would not be sufficient to enable such agency to provide an adequate level of education for all the children in attendance at its schools. Such criteria are to be designed to ensure that sufficient funds are to be available to such agency to enable such agency to provide an adequate level of education for such children.

The standards for determining whether a percentage of federally-connected children is so substantial as to make a regular section 3 entitlement insufficient to provide the children in the schools an adequate level of education appears to be subjective. However, there are sufficient objective standards available to make those determinations on an objective basis--objective enough that those derterminations can be reviewed administratively and judicially. The adequacy of the level of education will have been established under subparagraph (C) of subsection (b)(3); the amounts available from non-Federal sources will be easily estimated; and the amount of the payment on the regular entitlement after being reduced under section 5(c) can be estimated. When the sum of the regular payment and the amounts available from non-Federal sources are not sufficient to provide an adequate level of education for the children in the schools of a local educational agency, then a prima facie case of eligibility is established for that agency. It is reasonable to assume that the more payments are reduced for regular entitlements, the more local educational agencies will have eligibility under subsection (c).

Subparagraph (B) of paragraph (2) requires that the criteria established pursuant to subparagraph (A) make provision for four factors which are set out in four clauses (i) through (iv) of subparagraph (B).

Clause (i) of subparagraph (B) requires that there be established, as a standard for computing an entitlement, an amount necessary for providing an adequate level of education for all of the children in attendance at the schools of the local educational agency. That level of education is to be determined under subparagraph (C) of subsection (b)(3).

In determining the amount of the entitlement of any local educational agency under subsection (c), the criteria established pursuant to this clause become the standard against which the financial resources of the local educational agency are measured. The amounts established under subparagraph (C) of subsection (b)(3) to provide an adequate level of education for federally-connected children in the schools of local educational agencies under subsection (c) are to have a direct effect on the amounts to which local educational agencies are so entitled.

Clause (ii) of subparagraph (B) requires that the criteria take into consideration the effort the local educational agency is making to raise revenues from its local sources.

Clause (iii) of subparagraph (B) requires that the criteria take into consideration the resources available to the local educational agency from the State and other Federal sources.

Clause (iv) of subparagraph (B) requires that the criteria insure that the per-pupil expenditure of the local educational agency be at least equal to that of other local educational agencies in the State having school districts which are generally comparable with that of the local educational agency.

Subparagraph (C) of paragraph (2) deems local educational agencies with certain percentages of children in attendance at their schools to be eligible for special treatment under subparagraph (2). Those percentages are specified in clauses (i) and (ii) of subparagraph (C).

Clause (i) of subparagraph (C) specifies, as being automatically so eligible, those local educational agencies having in attendance at their schools a number of children who both reside on, and reside with a parent employed on, Federal property, which is at least equal to 20 percent of the total number of children so in attendance.

Clause (ii) of subparagraph (C) specifies, as being automatically so eligible, those local educational agencies having in attendance at their schools a number of children who both reside on, and reside with a parent employed on, Federal property, plus one-half of those who either reside on, or reside with a parent employed on, Federal property which is at least equal to 25 percent of the total number of children so in attendance.

WAIVER AUTHORITY

Subsection (d) of section 3 provides for a general waiver authority in order to avoid cases of undue hardship. This subsection requires the establishment of procedures and criteria for determining instances where the application of requirements or limitations in section 3 to particular local educational agencies would defeat the purposes of section 3. If the application of any such requirement or limitation would defeat the purposes of section 3 with respect to any local educational agency, then such requirement or limitation would be waived or modified for the benefit of that local educational agency. The criteria established are to be based upon the findings and policies stated in section 2 of the bill; and the criteria are to take into consideration hardships resulting from any failure to pay the full amounts to which local educational agencies are entitled under sections 3 and 5.

Subsection (d) is a consolidation of exceptions and waiver authority in sections 3(c)(2)(A) and 3(e) in current law and is based upon a policy in favor of simplification of the law.

SECTION 4: -- PAYMENTS TO LOCAL EDUCATIONAL AGENCIES WITH RESPECT TO CHILDREN WHO ARE IN ATTENDANCE AT THE SCHOOLS THEREOF BY REASON OF FEDERAL ACTIVITIES OR POLICIES

Section 4 of the bill authorizes payments to local educational agencies which are providing free public education for children who are in attendance at the schools of such agencies by reason of Federal policy but who are not connected with Federal property. This section contains five subsections: subsection (a) authorizes entitlements; subsection (b) governs the amounts of entitlements; subsection (c) contains administrative provisions; subsection (d) states the conditions for eligibility; and subsection (e) specifies a category of children which is deemed to be in the schools of a local educational agency by reason of Federal policy.

The text of section 4 reads as follows:

Sec. 4(a) Each local educational agency shall be entitled, under this section, to a payment for each fiscal year ending prior to October 1, 1984, with respect to each child who, during such year, is determined, in accordance with regulations promulgated for the purposes of this section, to be in attendance at the schools of such agency by reason of Federal activities or policies and with respect for whom provision is not made for payments under section 3 for that fiscal year.

(b) The amount of the payment to which a local educational agency shall be entitled for any fiscal year, under this section, shall be determined in accordance with such regulations, which regulations shall make provision for paying for an amount equal to the local share of the cost of education for each child described in subsection (a).

(c)(1) To the extent appropriate, the principles underlying section 3 shall be used in developing regulations for this section.

(2) For the purposes of this section, the definitions of terms used in section 3 shall apply to similar terms used in this section.

(d) No local educational agency shall be eligible to receive a payment under this section for any fiscal year, unless the number of children in attendance at its schools, for that year, who are described in subsection (a), is at least ten.

(e) For the purposes of subsection (a), any child who is a refugee in the United States under the laws of the United States, as defined by regulations, and who is in attendance at the schools of a local educational agency shall be deemed to be in attendance at such schools by reason of Federal activities or policies.

Subsection (a) of section 4 provides that each local educational agency is to be entitled, under section 4, to a payment for each fiscal year ending prior to October 1, 1984, with respect to each child who, during such year, is determined to be in attendance at the schools of such agency by reason of Federal activities or policies and with respect to whom provision is not made for payments under section 3 for that fiscal year. Such determination is to be made in accordance with regulations promulgated specifically for the purposes of section 4. Such regulations are expected to include, as being in attendance at a school by reason of Federal activities or policies, any group or category of children covered under section 4 in current law.

Subsection (b) of section 4 provides for determining the amounts of the payments to which local educational agencies are entitled. The amount to which any local educational agency is to be entitled for any fiscal year under section 4 is to be determined in accordance with regulations promulgated for the purposes of section 4. Such regulations are to make provision for paying to each local educational agency an amount equal to the local share of the cost of education for each child qualifying under section 4.

Subsection (c) of section 4 contains administrative provisions.

Subsection (c) is designed to provide guidance to the Secretary in carrying out the flexible authority granted under section 4. In administering section 4 it is expected that all of those provisions of section 3, except those relating to Federal property, be applied to any group or category of children determined to be in attendance at the schools of a local educational agency by reason of Federal activities or policies.

Paragraph (1) of subsection (c) provides that, to the extent appropriate, the principles underlying section 3 are to be used in developing regulations for the administration of section 4.

Paragraph (2) of subsection (c) makes the definitions of terms used in section 3 apply to similar terms used in section 4.

Subsection (d) of section 4 controls the eligibility of local educational agencies for payments under section 4. This subsection provides that no local educational agency is to be eligible to receive a payment under section 4 for any fiscal year, unless the number of children in attendance at its schools, for that fiscal year, who are described in subsection (a), is at least ten.

Subsection (e) of section 4 deems refugee children to be within the scope of subsection (a). Such section provides that, for the purposes of subsection (a) of section 4, any child who is a refugee in the United States under the laws of the United States (as defined by regulations promulgated for the purposes of section 4) and who is in attendance at the schools of a local educational agency is to be deemed to be in attendance at such schools by reason of Federal activities or policies.

Section 4 is based upon Recommendation VI; and it is a substitute for the second sentence of section 3(b) and sectons 4 and 4A in current law.

SECTION 5. -- ADMINISTRATION; APPLICATION; PAYMENTS; APPEALS AND JUDICIAL REVIEW

Section 5 of the bill contains administrative provisions for section 3 and, to the extent not provided in section 4, for section 4. This section contains five subsections: subsection (a) charges the Secretary of Education with the responsibility for administering sections 3 and 4; subsection (b) governs the submission and approval of applications under sections 3 and 4; subsection (c) provides for making payments on the basis of such applications; subsection (d) governs State treatment of Impact Aid payments in the programs of State aid to education; and subsection (e) provides for appeals and judicial review of the actions of the Secretary.

The text of section 5 reads as follows:

Sec. 5(a)(1) The Secretary of Education (hereinafter referred to as the "Secretary") shall be responsible for the administration of the programs of payments to local educational agencies for which provisions are made under sections 3 and 4, and this section and shall, in accordance with section 431 of the General Education Provisions Act, promulgate such rules and regulations as may be necessary to carry out the provisions of such sections.

(2) Regulations promulgated pursuant to paragraph (1) shall make provision for making determinations respecting entitlements and payments (and the amounts thereof) under sections 3 and 4, for each fiscal year, on the basis of the most recent satisfactory uniform data available. Such regulations shall provide for making such determinations on the basis of such estimates and projections of statistical data as may be necessary to supplement available data and make such data more recent nearly uniform, except that determinations based upon such estimates and projections shall not operate to deprive any local educational agency of the amount of the payment for which it is eligible, for any fiscal year, when determinations are made on the basis of actual data.

(b)(1) Any local educational agency which desires to receive a payment under section 3 or 4 for any fiscal year shall submit to the Secretary an application therefor, in accordance with regulations, which application shall be in such form, contain such information, and be submitted at such time and in such manner as shall be prescribed in such

regulations. Such regulations shall provide that all determinations necessary for the approval of applications shall be made within 60 days after the date before which they are to be submitted and that action on approval of such applications shall be taken not later than 30 days thereafter, unless the applicant requests a delay for a specific period of time. The Secretary shall approve any application which meets the requirements of the appropriate provisions of this Act.

(2)(A) Any local educational agency making an application under this subsection for any fiscal year with respect to an entitlement created on the basis of Indian children residing on Indian lands shall include in such application a description of such policies and procedures established by such agency to ensure that --

(i) such children are to receive an adequate level of education, considering the special educational needs of such children;

(ii) the tribes and parents of such children have an opportunity to review the application and present their views thereon; and

(iii) such tribes and parents are consulted, and involved in, the development and operation of the educational program designed to provide such children an adequate level of education.

(B) If an Indian tribe, or its designee, having a child in attendance at the schools of a local educational agency, files a complaint with respect to the application of that agency subject to this paragraph, the Secretary shall, unless the Secretary determines that the

complaint is frivolous or otherwise without substantial merit, disapprove such application and such disapproval shall be subject to administrative and judicial review, as provided in this Act, except that the tribe or person making a complaint under this subparagraph shall be entitled to present evidence to support such complaint; and for such purposes, a complainant under this subsection shall have the same right of review as a local educational agency.

(c)(1) Except as is otherwise provided in paragraph (3), the Secretary shall, for each fiscal year, pay to each local educational agency, which has submitted, and has had approved, an application pursuant to subsection (b) the amount to which that agency is entitled under section 3 or section 4 (or both), as the case may be. Sums appropriated, for any fiscal year, to enable the Secretary to make payments with respect to such an application shall, once appropriated, remain available, notwithstanding any other provision of law (unless enacted expressly in specific limitation of this paragraph), for obligation and payments with respect to such application until the full amount due on such application is paid.

(2)(A) Notwithstanding section 3679 of the Revised Statutes (31 U.S.C. 665), the Secretary shall, not later than 30 days after the beginning of each fiscal year, make a preliminary payment to each local educational agency of an amount equal to not less than 75 per centum of the amount the Secretary estimates to be the amount for which such agency is eligible for that year under section 3 or 4 (or both).

(B) In order to be eligible for a preliminary payment for any fiscal year under this paragraph a local educational agency shall --

(i) submit a special application therefor; and

(ii) have received a payment under this subsection for the preceeding fiscal year.

(3) If, for any fiscal year, the funds appropriated for making payments pursuant to paragraph (1) are insufficient to pay in full the total amounts necessary to satisfy all the entitlements created under sections 3 and 4, for such year, the Secretary shall --

(A) make a payment (for which the full faith and credit of the United States is pledged) to each local educational agency for which an entitlement which has been established pursuant to subsection (c) of section 3 for such year of the amount to which it is entitled as so established;

(B) from the remainder of such funds, pay to each other local educational agency an amount which bears the same ratio to its entitlement under section 3 for such year as such remainder bears to the aggregate of the unsatisfied entitlements created under section 3 for that year; and

(C) from funds appropriated for making payments on entitlements created under section 4, pay an amount to each local educational agency, eligible for such a payment, in accordance with the terms of the Act making the appropriation.

(d)(1) No payment under this section shall be made to any local educational agency for any fiscal year in any State if --

(A) that State has, during the preceding fiscal year, taken into consideration payments under this section in determining the eligibility of any local educational agency in that State for State aid for free public education or the amount of such aid;

(B) that State makes such State aid available to local educational agencies in such a manner as to result in less State aid to any local educational agency which is eligible for a payment under this section than such agency would receive if such agency were not so eligible; or

(C) that State requires or permits (i) local educational agencies to spend funds from a payment under this section (or other local funds based on the amount of such payment) for any purpose for which State funds (but not local funds) are otherwise made available, or (ii) general purpose units of local government to divert such payments from fiscally dependent local educational agencies.

(2)(A) Notwithstanding the prohibition in paragraph (1), States which have in effect plans of State aid to local educational agencies which are designed to equalize, and have the effect of equalizing, average per-pupil expenditures among such agencies, are to be permitted to take payments under this section into consideration in determining the amount of State aid to an agency receiving such payments if --

(i) the disparity in average per-pupil expenditures by the local educational agency having the highest per-pupil expenditure *in the State does not exceed 110 percentum of that having the lowest per-pupil expenditure in the State;*

(ii) the average per-pupil expenditure in the State at least equals the average per-pupil expenditure in all the States;

(iii) the effect of taking such payments into consideration would not be to reduce the per-pupil expenditure by the local educational agency to a level lower than the average per-pupil expenditure in the State; and

(iv) the amount of such payment taken into consideration may not exceed 50 percent thereof.

(B) In determining the local educational agency having the highest average per-pupil expenditure in a State, any local educational agency, which (because of unusual circumstances) has an unusually high per-pupil expenditure may be excluded, except that the number of local educational agencies so excluded in any State may not have, in the aggregate, an average daily membership exceeding two percentum of the average daily membership of all the local educational agencies in the State.

(C) The payment to any local educational agency having an entitlement established under subsection (c) of section 3 shall not, in any event, be taken into consideration by any State under this subsection.

(3) The terms "State aid" and "equalize expenditures" as used in this subsection shall be defined by the Secretary by regulation, after consultation with State and local educational agencies affected by this subsection: Provided, That the term "equalize expenditures" shall not be construed in any manner adverse to a program of State aid for free

public education which provides for taking into consideration the additional cost of providing free public education for particular groups or categories of pupils in meeting the special educational needs of such children as handicapped children, economically disadvantaged, those who need bilingual education, and gifted and talented children.

(4)(A) If a State desires to take payments under this section into consideration as provided in this subsection for any fiscal year, that State shall, not later than sixty days prior to the beginning of such fiscal year, submit notice to the Secretary of its intention to do so. Such notice shall be in such form and be accompanied by such information as to enable the Secretary to determine the extent to which the program of State aid of that State is consistent with the provisions of this subsection. In addition, such notice shall be accompanied by such evidence as the Secretary finds necessary that each local educational agency in that State has been given notice of the intention of the State. If the Secretary determines that the program of State aid of a State submitting notice under this subparagraph is consistent with the provisions of this subsection, the Secretary shall certify such determination to that State.

(B) Prior to certifying any determination under subparagraph (A) any State for any fiscal year, the Secretary shall give the local educational agencies in that State an opportunity for a hearing at which such agencies may present their views with respect to the consistency of the State aid program of that State with the provisions of this subsection.

(C) The Secretary shall not finally deny to any State for any fiscal year certification of a determination under subparagraph (A) without first giving that State an opportunity for a hearing.

(e)(1) Any local educational agency, which is dissatisfied with an action of the Secretary under section 3, section 4, or this section, shall be entitled to administrative and judicial review as provided in this subsection. A failure to act with respect to an application within the time periods specified in subsections (b) and (c) shall be deemed, for the purposes of this paragraph, to be an adverse action thereon.

(2) Any local educational agency which desires to have administrative review of an action, subject to review under this subsection, shall submit an application for review thereof to the Education Appeal Board (hereinafter referred to as the "Board"), established under section 451 of the General Education Provisions Act. Upon receipt by the Board of any such application, the Chairman thereof shall, in accordance with the provisions of such section not inconsistent with those of this subsection, immediately designate a panel of three members to conduct such review and decide the case under expedited procedures, to which panel the Board shall delegate its functions with respect to such application. On any such panel --

(A) no member shall be an individual in the full-time employment of the Federal Government;

(B) no member shall be an individual employed by a local educational agency eligible to receive a payment under this section; and

(C) no member shall be a resident of, or employed by, the State in which the applicant is located.

(3) Any local educational agency which has received a written notice of an action reviewable under this section and desires to have that action reviewed shall, within thirty days after receipt of such notice, submit an application for review. The failure to receive notice of an action shall, upon an allegation of such failure in an application for review, constitute notice if, in accordance with procedures developed by the Board, a reasonable time for an action and notice thereof has lapsed.

(4) The Board shall have the authority, in order to make a decision, to review all matters of law and fact raised in an application for review; and its decisions shall, unless a petition for judicial review has been filed within thirty days after notice of a decision has been received by the applicant, be final with respect to both the Secretary and the applicant.

(5) Decisions of the Board with respect to applications for review under this subsection shall be subject to review, as provided in section 455 of the General Education Provisions Act.

(6) In any case where an applicant for review is the prevailing party (either in a decision by the Board or in a decision upon judicial review) the applicant's costs for such review (including any damages incurred by the applicant) shall be assessed against the Secretary by the Board or the court, as the case may be; and such applicant shall be entitled to the payment of such costs.

ADMINISTRATION

Subsection (a) of section 5 vests in the Secretary of Education the responsibility for the administration of the programs authorized by sections 3 and 4 and makes provision for the promulgation of necessary regulations. This section contains two paragraphs: paragraph (1) relates to administration; and paragraph (2) governs regulations.

REGULATIONS

Paragraph (1) of subsection (a) provides that the Secretary of Education is to be responsible for the administration of the programs of payments to local educational agencies authorized by sections 3, 4, and 5. Such paragraph also requires that the Secretary promulgate such rules and regulations as may be necessary to carry out the provisions of such sections. Such rules and regulations are to be promulgated in accordance with section 431 of the General Education Provisions Act (20 U.S.C. 1232).

Paragraph (1) is comparable with section 401(b) of Public Law 874 in existing law. Such paragraph includes new language which makes clear that the procedures set out in section 431 of the General Education Provisions Act are to be used in promulgating regulations under paragraph (1). Those procedures require that --

(1) each provision of a regulation contain a citation of the legal authority upon which it is based;

(2) there be delayed effective dates on regulations;

(3) during that delay, there be an opportunity for public comment on proposed regulations;

(4) regulations be enforced uniformly throughout the Nation; and

(5) there be an opportunity for congressional determinations respecting the validity of such regulations.

ESTIMATES OF STATISTICAL DATA

Paragraph (2) of subsection (a) provides that regulations promulgated pursuant to paragraph (1) of subsection (a) are to make provision for making payments on the basis of the most recent satisfactory uniform data available; and such regulations are to provide for making such estimates and projections of statistical data as may be necessary. Paragraph (2) contains two sentences: the first requires determinations to be made on the basis of the most recent data; and the second relates to estimates.

Paragraph (2) is comparable with section 3(f) of existing law. Substantively, paragraph (2) contains two significant policy differences from existing law:

(1) Existing law uses data from the second year preceding the year for which computations are to be made. Paragraph (2) requires that the data used be those for the most recent fiscal year for which satisfactory uniform data are available.

(2) Existing law simply authorizes the use of estimates in making determinations. Paragraph (2) requires the use of estimates and the use of projections of statistical data when projections are necessary to make satisfactory uniform data available.

The first sentence of paragraph (2) requires that such regulations make provision for making determinations respecting entitlements and payments (and the amounts of such entitlements and payments) under sections 3 and 4 for each fiscal year, on the basis of the most recent satisfactory uniform data available to the Secretary.

The second sentence of paragraph (2) requires that such regulations provide for making such determinations on the basis of such estimates and projections of statistical data as may be necessary to supplement available data and make such data more recent and more nearly uniform. Such second sentence contains an exception to the requirement that determinations be made on the basis of estimates and projections. Such determinations may not operate to deprive any local educational agency of the amount of the payment to which it is eligible, for any fiscal year, when, at some later time, determinations are made on the basis of actual data.

APPLICATIONS

Subsection (b) of section 5 governs the submission and approval of applications for payments under sections 3 and 4. This subsection contains two paragraphs: paragraph (1) governs all applications; and paragraph (2) relates specifically to applications for payments on the basis of entitlements for children residing on Indian lands.

SUBMISSION AND APPROVAL

Paragraph (1) of subsection (b) contains three sentences: the first sentence controls the submission of applications; the second sentence provides for the time of their approval; and the third sentence requires approval of applications.

The first sentence of paragraph (1) provides that any local educational agency which desires to receive a payment under section 3 or 4 for any fiscal year is to submit to the Secretary an application for such payment. Such applications are to be submitted in such form, contain such information, and be submitted at such time and in such manner as is to be prescribed in regulations.

This sentence is the equivalent of section 5(a) in current law.

The second sentence of paragraph (1) requires that the regulations governing the submission and approval of applications set out a timetable for actions in such applications. The regulations promulgated pursuant to paragraph (1) of subsection (a) are to provide for making determinations and taking action with respect to their approval prior to specified dates. All determinations necessary for the approval of an application must be made within 60 days after the date set in the regulations for their submission. Final action respecting the approval of applications must take place not later than 30 days after such necessary determinations are made. If an applicant requests a delay in making any such determination or action for a specific period of time, then those determinations and that action may be delayed for such period of time.

This sentence has no equivalent provision in current law; it is made necessary in order to effectuate the review of procedures in section 5(e).

The third sentence of paragraph (1) requires that the Secretary approve any application which meets the appropriate requirements of the appropriate provisions of the Impact Aid Act.

This sentence, like the second sentence, is made necessary by the review procedures in section 5(e).

APPLICATIONS WITH RESPECT TO INDIAN CHILDREN

Paragraph (2) of subsection (b) contains special provisions relating to applications for payments on the basis of entitlements for children residing on Indian lands. This paragraph contains two subparagraphs: subparagraph (A) relates to the content of such applications; and subparagraph (B) sets out the terms for review and appeals of disapproved applications.

This paragraph is comparable with section 5(b)(3) in current law.

This paragraph simplifies the provisions of current law because the review procedures in section 5(c) duplicate those in current law.

Subparagraph (A) of paragraph (2) provides that any local educational agency making an application under subsection (b) for any fiscal year with respect to an entitlement created on the basis of Indian children residing on Indian lands is to include descriptions of special policies and procedures relating to the education of such children. The matters to be described are set out in clauses (i), (ii) and (iii) of subparagraph (A).

Clause (i) of subparagraph (A) requires that such an application include a description of such policies and procedures established by the applicant local educational agency which are designed to ensure that Indian children receive an adequate level of education, taking into consideration the special educational needs of such children.

Clause (ii) of subparagraph (A) requires such a description of policies and procedures designed to ensure that the tribes and parents of Indian children have an opportunity to review the application and present their views on the application.

Clause (iii) of subparagraph (A) requires that such tribes and parents be consulted, and involved in, the development and operation of the educational programs designed to provide Indian children with an adequate level of education.

Subparagraph (B) of paragraph (2) provides for disapproval of applications subject to paragraph (2). If an Indian tribe (or its designee) having a child in attendance at the schools of a local educational agency submitting such an application files a complaint with respect to such application the Secretary must disapprove that application, unless the Secretary determines that the complaint is frivolous or otherwise without substantial merit. The disapproved application is then subject to appeals and judicial review. The complainant is to be entitled to present evidence to support such a complaint and is to be entitled to review as if the complainant were an adversely affected local educational agency.

PAYMENTS TO LOCAL EDUCATIONAL AGENCIES

Subsection (c) of section 5 controls making payments on the basis of entitlements under sections 3 and 4. This subsection contains three paragraphs: paragraph (1) directs that payments be made; paragraph (2) requires preliminary payments; and paragraph (3) allocates funds among applications when appropriations are insufficient to satisfy all entitlements.

This subsection is based upon Recommendation VIII.

DIRECTION TO MAKE PAYMENTS

Paragraph (1) of subsection (c) creates the legal obligation to pay amounts under applications and reserves the sums appropriated for making payments. The first sentence of paragraph (1) directs the Secretary to make payments, while the second sentence controls the availability of appropriations for making payments.

The first sentence of paragraph (1) directs the Secretary to pay to each local educational agency which has an approved application the amount to which that local educational agency is entitled under that application, as approved. This direction is qualified in that it is made subject to paragraph (3) of subsection (c) which provides for paying less than the full entitlement when funds are insufficient.

The second sentence of paragraph (1) provides that funds appropriated for making payments for applications approved by the Secretary are to remain available for obligation and making payments until those payments are made.

This sentence is comparable with the first sentence of section 5(b)(1) in current law.

PRELIMINARY PAYMENTS

Paragraph (2) of subsection (c) directs that preliminary payments be made. This paragraph contains two subparagraphs: subparagraph (A) directs that payments be made; and subparagraph (B) sets the conditions for receiving such payments.

This paragraph is the equivalent of paragraph (2) of section 5(b)(1) in current law and differs therefrom in that --

(1) preliminary payments are exempted from the apportionment and antideficiencies provision of current law which have defeated the purpose of the preliminary payments requirement; and

(2) preliminary payments are to be based upon the amount the Secretary estimates the local educational agency is to receive rather than the previous year's payment.

Subparagraph (A) of paragraph (2) directs that the Secretary make a preliminary payment to each local educational agency of an amount equal to 75 percent of the amount the Secretary estimates to be the amount for which that agency is eligible for each fiscal year under sections 3 and 4. Such payments are to be made not later than 30 days after the beginning of each fiscal year and are to be made notwithstanding the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665).

Subparagraph (B) of paragraph (2) provides that no local educational agency is to be eligible for a preliminary payment for any fiscal year unless it received a payment for the preceeding fiscal year and it makes special application for a preliminary payment.

ALLOCATION OF FUNDS WHEN APPROPRIATIONS ARE INSUFFICIENT TO PAY ALL ENTITLEMENTS

Paragraph (3) of subsection (c) allocates appropriations among local educational agencies when appropriations are insufficient to satisfy all entitlements. If, for any fiscal year, the funds appropriated for making payments pursuant to paragraph (1) of subsection (c) are not sufficient to pay in full the amounts necessary to satisfy all the entitlements created under sections 3 and 4, for that fiscal year, the Secretary is directed to allocate the appropriations available for that year in accordance with priorities set out in clauses (A), (B), and (C) of paragraph (3).

This paragraph is the equivalent of section 5(c) in current law. Its adoption would eliminate the "tier" system of payments in existing law. This section makes section 5(c) in current law unnecessary.

Clause (A) of paragraph (3) gives the highest priority to payments on entitlements for local educational agencies having heavily impacted school districts. Under clause (A), the Secretary is directed first to pay to each local educational agency for which an entitlement has been established pursuant to subsection (c) of section 3, for any fiscal year, the full amount to which it is entitled as established under such subsection for that fiscal year. Such clause contains a parenthetical clause which pledges the full faith and credit of the United States for the payments under clause (A).

Clause (B) of paragraph (3) relates to payments to all other local educational agencies eligible to receive payments under section 3. This clause applies to funds appropriated for payments under section 3 which remain after payments are made pursuant to clause (A) of paragraph (3). Under clause (B), the Secretary is directed to pay, from the remainder of such funds, each local educational agency an amount which bears the same ratio to its entitlement under section 3 for that year as such remainder bears to the aggregate of the unsatisfied entitlements created under section 3 for that year.

Clause (C) of paragraph (3) relates to payments on entitlements created under section 4. Clause (C) is based upon an expectation that, when the operation of paragraph (3) is made necessary, any funds available for payments for section 4 entitlements would be appropriated apart from funds available for section 3 entitlements. Under clause (C), the Secretary is directed to pay to each local educational agency eligible for a payment under section 4 an amount determined in accordance with the terms of the Act making the appropriations. Clause (C) is to be construed to authorize legislative language in an appropriation Act for the purposes of section 4.

STATE TREATMENT OF PAYMENTS

Subsection (d) of section 5 limits payments to local educational agencies which take Impact Aid payments into consideration in their State aid programs. Subsection (d) contains four paragraphs: paragraph (1) states the prohibition; paragraph (2) provides an exception to the prohibition; paragraph (3) provides for definitions for the purposes of subsection (d); and paragraph (4) controls the procedures for exceptions under paragraph (2).

This recommendation is based on Recommendation IX.

PROHIBITION

Paragraph (1) of subsection (d) provides that no payment, under section 5, may be made to any local educational agency for any fiscal year in any State if any one of three circumstances exist. Those circumstances are described in clauses (A), (B), and (C) of paragraph (1).

Clause (A) of paragraph (1) prohibits payments to a local educational agency in a State if that State has, during the preceeding fiscal year, taken payments under section 5 into consideration in determining the eligibility of any local educational agency in that State for State aid for free public education or the amount of such aid.

Clause (B) of paragraph (1) prohibits such payments if the State makes State aid available to local educational agencies in such a manner as to result in less State aid to any local educational agency which is eligible for an Impact Aid payment than such local educational agency would receive from State aid if such local educational agency were not so eligible.

Clause (C) of paragraph (1) prohibits such payments if either --

(1) the State requires or permits local educational agencies to spend from an Impact Aid payment (or other local funds based upon the amount of its Impact Aid payment) for any purpose for which State funds (but not local funds) are otherwise available; or

(2) the State requires or permits general purpose units of local government to divert Impact Aid payments from fiscally dependent local educational agencies.

EXCEPTION

Paragraph (2) of subsection (d) contains an exception to the prohibition in paragraph (1) and sets out the terms of that exception. Paragraph (2) contains three subparagraphs: subparagraph (A) creates and sets the terms for the exception; subparagraph (B) contains an exclusion from the applicability of one of those terms; and subparagraph (C) makes the prohibition in paragraph (1) absolute in the case of any local educational agency having a heavily impacted school district.

Subparagraph (A) of paragraph (2) creates an exception to paragraph (1) of subsection (d) for certain States. That exception applies to States which have in effect plans of State aid to local educational agencies which are designed to equalize, and which have the effect of equalizing, average per-pupil expenditures among local educational agencies in those States. Those States may take Impact Aid payments into consideration in determining the amount of State aid to a local educational agency receiving Impact Aid payments if such plan meets the qualifications described in clauses (i), (ii), (iii), and (iv) of subparagraph (A).

Clause (i) of subparagraph (A) states the first qualification. The disparity in average per-pupil expenditures by the local educational agency in the State having the highest per-pupil expenditure in the State may not exceed 110 percent of the local educational agency having the lowest per-pupil expenditure in that State.

Clause (ii) of subparagraph (A) requires that the average per-pupil expenditure in the State must be at least equal to the average per-pupil expenditure in all the States.

Clause (iii) of subparagraph (A) prohibits the use of the exception in any case where the effect of taking Impact Aid payments into consideration reduces the per-pupil expenditure by a local educational agency to a level lower than the average per-pupil expenditure in the State.

Clause (iv) of subparagraph (A) limits the amount of the Impact Aid payment which may be taken into consideration in an otherwise qualifying State. No State may take into consideration more than 50 percent of the Impact Aid payment to a local educational agency.

Subparagraph (B) of paragraph (2) permits, in determining the highest per-pupil expenditure in a State under clause (i) of subparagraph (A), the exclusion of any local educational agency which has an unusually high per-pupil expenditure if the high per-pupil expenditure is the result of unusual circumstances requiring a high expenditure. The number of local educational agencies which may be so excluded in any State may not have, in the aggregate, an average daily membership which exceeds two percent of the average daily membership of all the local educational agencies in the State.

Subparagraph (C) of paragraph (2) prohibits absolutely an exception for any State which takes into consideration any Impact Aid payment to any local educational agency which has a heavily impacted school district.

DEFINITIONS FOR EXCEPTION

Paragraph (3) of subsection (d) provides that the terms "State aid" and "equalize expenditures" as used in subsection (d) are to be defined by the Secretary by regulation, after consultation with State and local educational agencies affected by subsection (d). Paragraph (3) contains a proviso which states that the term "equalize expenditures" is not to be construed in any manner adverse to a program of State aid for free public education which provides for taking into consideration the additional cost of providing free public education for particular groups or categories of pupils in meeting the special educational needs of such children as handicapped children, economically disadvantaged, those who need bilingual education, and gifted and talented children.

PROCEDURES FOR EXCEPTION

Paragraph (4) of subsection (d) sets out procedures to determine if States may take into consideration payments under this subsection. Paragraph (4) contains three subparagraphs.

Subparagraph (A) of paragraph (4) provides that if a State desires to take payments under section 5 into consideration as provided in subsection (d) for any fiscal year, that State is, not later than sixty days prior to the beginning of such fiscal year, to submit notice to the Secretary of its intention to do so. Such notice is to be in such form and be accompanied by such information as to enable the Secretary to determine the extent to which the program of State aid of that State is consistent with the provisions of subsection (d). In addition, such notice is to be accompanied by such evidence as the Secretary finds necessary to ensure that each local educational agency in that State has been given notice of the intention of the State. If the Secretary determines that the program of State aid of a State submitting notice under subparagraph (A) is consistent with the provisions of this subsection, the Secretary is to certify such determination to that State.

Subparagraph (B) of paragraph (4) provides that prior to certifying any determination under subparagraph (A) for any State for any fiscal year, the Secretary is to give the local educational agencies in that State an opportunity for a hearing at which such agencies may present their views with respect to the consistency of the State aid program of that State with the provisions of this subparagraph.

Subparagraph (C) of paragraph (4) provides that the Secretary is not to finally deny to any State for any fiscal year certification of a determination under subparagraph (A) without first giving that State an opportunity for a hearing.

Comment on subsection (d). Subsection (d) and its variance from section 5(d) in current law represent a careful balancing of the policy in favor of Federal neutrality with regard to the laws of the States against the paramount interest of the Federal Government in the education of federally-connected children. It reflects a recognition of a trend toward equalization in State school finance laws and the consequent lessened reliance of local educational agencies upon local real property taxes for revenues and a recognition that equalization tends to spread the effect of the Federal burden across an equalized State. At the same time, experience during the past five years has shown that the Education Department has been overly tolerant of State equalization programs which do not result in equalization and that the States tend to be less sensitive to the needs of heavily burdened local educational agencies. It is expected that the recommendations would accomplish a better balance with respect to these policies than has been the case.

ADMINISTRATION AND JUDICIAL REVIEW

Subsection (e) of section 5 sets out procedures for administrative appeals and judicial review of actions by the Secretary. Subsection (e) contains five paragraphs: paragraph (1) entitles local educational agencies to administrative and judicial review of actions by the Secretary; paragraphs (2) and (3) provide procedures for administrative review; paragraph (4) authorizes the scope of administrative review; and paragraph (5) authorizes judicial review.

This subsection is based upon Recommendation VII(5).

ENTITLEMENT TO REVIEW

Paragraph (1) of subsection (e) entitles local educational agencies to administrative and judicial review in accordance with the provisions of subsection (e). It contains two sentences: the first entitles local educational agencies to review of actions by the Secretary; and the second deems certain failures to act to be adverse actions.

The first sentence of paragraph (1) entitles any local educational agency to administrative and judicial review if it is dissatisfied with an action by the Secretary under section 3, 4, or 5 of the Act. Procedures for such review are to be governed by subsection (e).

The second sentence of paragraph (1) deems, for the purposes of paragraph (1), failures to act on applications within certain time limits to be adverse actions. If, with respect to any application submitted under subsection (b) or (c) of section 5, there is a failure to act within the time periods set therein, that failure is to be deemed to be an adverse action by the Secretary and subject to review under subsection (e).

PROCEDURES FOR REVIEW

Paragraph (2) of subsection (e) provides for procedures to be used in cases of administrative review of actions of the Secretary. Paragraph (2) contains three sentences: the first provides for the submission of applications for review to the Education Appeal Board; the second requires that Board to designate a panel to review such an application; and the third specifies limitations on the membership of that panel.

The first sentence of paragraph (2) provides that any local educational agency which desires to have administrative review of an action of the Secretary under section 3, 4, or 5 is to submit an application for review of that action. Such application for review is to be submitted to the Education Appeal Board established under section 451 of the General Education Provisions Act.

The second sentence of paragraph (2) requires the Education Appeal Board to designate a panel immediately upon receipt by that Board of an application for review under the first sentence of paragraph (2). Such panel is to be designated in accordance with the provisions of section 451 of the General Education Provisions Act to the extent that such provisions are not inconsistent with those of subsection (e).

Such second sentence requires that a panel designated thereunder is to have three members and that the Education Appeal Board delegate its functions with respect to the application in question to that panel. The panel is to conduct the review for which the application is made under expedited procedures and decide the case in question.

The third sentence of paragraph (2) contains three clauses which govern the membership of any panel designated under the second sentence of paragraph (2).

Clause (A) in such third sentence provides that no individual who is in the full-time employment of the Federal Government may be a member of any such panel.

Clause (B) in such third sentence provides that no individual employed by a local educational agency eligible to receive an Impact Aid payment may serve on any such panel.

Clause (C) in such third sentence provides that no resident of the State in which the local educational agency making application for review may serve on such panel.

APPLICATION FOR REVIEW

Paragraph (3) of subsection (e) provides for the time for submitting applications for review. Paragraph (3) contains two sentences: the first sets the time for application when notice of an action has been received; and the second provides for applications when no notice has been received.

The first sentence of paragraph (3) requires that any local educational agency which has received notice of an action reviewable under subsection (e) and which desires to have such action so reviewed submit, within 30 days after receipt of such notice, an application for review.

The second sentence of paragraph (3) provides that the Education Appeal Board establish procedures for determining a reasonable time for an action subject to review and for notice thereof. If, with respect to any such action or notice, sufficient time has lapsed, under such procedures, and a local educational agency submits an application for review (even though it has not received notice of a reviewable action) which alleges a failure to receive notice, such allegation is to be deemed a notice of an action and that action is to be reviewable as if such a notice had been received by the local educational agency.

SCOPE OF REVIEW

Paragraph (4) of subsection (e) provides that the Education Appeal Board is to have the authority to review and decide all matters of law and fact raised in an application for review. The decisions of the Board are to be final with respect to both the Secretary and the applicant unless, within 30 days after notice of a decision has been received by the applicant, a petition for judicial review of any such decision has been filed by either the applicant or the Secretary.

JUDICIAL REVIEW

Paragraph (5) of subsection (e) provides for judicial review. Decisions of the Education Appeal Board with respect to all matters of law and fact in an application for review are to be subject to judicial review under section 455 of the General Education Provisions Act.

ASSESSMENT OF COSTS

Paragraph (6) of subsection (e) provides for assessing the costs of review and damages against the Secretary. If an applicant is the prevailing party in any decision of the Education Appeal Board or of a court, upon judicial review, that applicant's costs for the review and any damages suffered by the applicant which were caused by the action reviewed are to be assessed against the Secretary by the Board or the court, as the case may be.

SECTION 6. -- EFFECTIVE DATE AND EFFECT ON EXISTING LAW

Section 6 of the bill provides that the bill is to be effective with respect to fiscal years beginning after September 30, 1981, and with respect to such fiscal years, the provisions of title I of Public Law 874, Eighty-first Congress are to have no effect, except that sections 6 and 7 of such title I are to continue in effect in accordance with the terms of such sections.

The text of section 6 is as follows:

> *Sec. 6. This Act shall be effective with respect to fiscal years beginning after September 30, 1981, and with respect to such fiscal years the provisions of title I of Public Law 874, Eighty-first Congress shall have no effect, except that sections 6 and 7 thereof shall continue to be effective in accordance with the terms of those sections.*

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CHARTER

COMMISSION ON THE REVIEW OF THE FEDERAL IMPACT AID PROGRAM

PURPOSE

In recognition of the responsibility of the United States Government, the Congress has declared it be the policy to provide financial assistance to those local educational agencies whose school population is impacted by the presence of Federal activities. Public Law 81-874, as amended, charges the Commissioner of Education to pay these local educational agencies a prescribed amount which is meant to compensate them for the financial burden placed upon them by reason of loss of tax revenue or provision of educational services to federally connected children or by sudden or substantial increase in school attendance as the result of Federal activities. The Education Amendments of 1978, Public Law 95-561, require a review and evaluation of the administration and operation of the impact aid program under Public Law 81-874, including the equity of the present funding structure, the relative benefit of the program in view of its increasing costs and the limitation on available funds, and the ways in which these local educational agencies can best be assisted in meeting their educational needs. Discharge of these responsibilities requires the establishment and advice of the Commission on the Review of the Federal Impact Aid Program.

AUTHORITY

This Commission is established under Section 1015 of Public Law 95-561, the Education Amendments of 1978. It is governed by provisions of Part D of the General Education Provisions Act (P.L.90-247, as amended; 20 U.S.C.1233 *et seq.*) and the Federal Advisory Committee Act (P.L.92-463; 5 U.S.C. Appendix I) which set forth standards for the formation and use of committees.

FUNCTIONS

The Commission advises the Congress, the President, the Secretary of Health, Education, and Welfare, the Assistant Secretary for Education, and the Commissioner of Education. The Commission shall review and evaluate the administration and operation of the impact aid program under the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) including:

1) the equity of the present funding structure under Public Law 874,

2) the relative benefit of the assistance for impact aid under Public Law 874 in view of the increasing costs of the program and the limitation on the availability of funds, and

3) the ways in which districts of local educational agencies which are Federally impacted can best be assisted in meeting their educational needs.

The Commission shall closely coordinate its activities with activities of the Advisory Panel on Financing Elementary and Secondary Education established under section 1203 of the Education Amendments of 1978 (Public Law 95-561).

The Commission shall prepare and submit to the President and to the Congress no later than December 1, 1980, a report on the review and evaluation required by section 1015 of the Education Amendments of 1978, together with such recommendations for legislation relating to the authorization of the program and funding for the program, as the Commission deems appropriate.

STRUCTURE

The Commission consists of ten members appointed by the President, one of whom shall be designated by the President to chair the Commission. Members shall include persons who are not fulltime employees of the Federal Government and who are knowledgeable about the problems of local educational agencies in impacted areas, State and local officials, leading authorities in education and the social sciences, and from the general public. Members shall serve for terms not to exceed three years which in the case of initial members, shall be staggered.

The Secretary of Health, Education, and Welfare shall assure that the Department of Health, Education, and Welfare provide full support and cooperation to the Commission.

The Commission is authorized to appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, or otherwise obtain the services of, such professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions, as prescribed by law.

The Commission is authorized to create such subcommittees, composed of its parent membership, as necessary to enable the Commission to carry out its functions. The Commission shall notify the Office of Education Committee Management Officer upon such establishment or modifications of subcommittees, providing information on name, membership, functions and estimated frequency of meetings.

Provision of administrative services shall be the responsibility of the Executive Deputy Commissioner of Education for Resources and Operations.

The Director, Division of School Assistance in Federally Affected Areas, shall serve as the Office of Education Program Delegate to the Commission.

MEETINGS

The Commission shall meet at the call of the Chair, but not less than two times each year. Subcommittees shall not meet except with the approval of the Commission Chair.

Meetings are open to the public except as determined otherwise by the Commissioner. Adequate public notification will be given in advance of each Commission meeting.

Meetings are conducted, and records of proceedings kept, as required by applicable laws and Department regulations.

COMPENSATION

Members who are not fulltime Federal employees are paid at the rate of $100 per day, plus per diem and travel expenses in accordance with Federal Travel Regulations.

ANNUAL COST ESTIMATE

Estimated annual cost for operating the Commission, including compensation and travel expenses for the members but excluding staff support, is $568,200. Estimated annual person-years of staff support required is 3.5, at an estimated annual cost of $135,000.

REPORTS

The Commission, in conjunction with the report required in the functions section of this charter, shall make an annual report of its activities, finding and recommendations to the Congress not later than March 31 of each year, which shall be submitted with the Commissioner's annual report. This report shall contain, as a minimum, a list of members and their business addresses, the dates and places of meetings, the functions of the Commission, and a summary of the Commission's activities and recommendations made during the year.

Copies of all Commission reports shall be provided to the Department and Office of Education Committee Management Officers and to the Office of Education Program Delegate to the Commission.

DURATION

Subject to section 448(b) of the General Education Provisions Act, the Commission shall terminate one month following submission of the report required by section 1015 of the Education Amendments of 1978 (Public Law 95-561). This charter shall expire two years from date of signature or whenever the Commission terminates, whichever is sooner.

SPECIAL REPORT
OF THE
COMMISSION ON THE REVIEW
OF THE
FEDERAL IMPACT AID PROGRAM

The Commission on the Review of the Federal Impact Aid Program, established under section 1015 of the Education Amendments of 1978 (Public Law 95-561) held a scheduled business meeting on July 17, 1980, and hereby submits to the President and the Congress a special report. The purpose of this special report is to request from the Congress the authority to submit to the President and the Congress at least one and not more than three reports supplemental to its Final Report which is to be submitted not later than December 1, 1980.

On April 29, 1980, this Commission submitted an Interim Report, adopted on April 22, 1980, which was followed by Supplemental Documentation on May 6, 1980. The Interim Report, together with its Supplemental Documentation, was submitted as the result of congressional requests regarding the continuation of, and funding for, the Impact Aid Program, which is authorized by Public Law 874, Eighty-first Congress.

Chapter II of the Supplemental Documentation reported on the uniqueness of having an education program evaluated by a multi-member, presidentially appointed Commission, using a staff of Government employees and using regular procurement and contracting procedures. That Chapter also contained information regarding some of the difficulties which naturally arise when those procedures are not adapted to meet the needs of a time-limited study, having a very narrow and definite purpose.

The inability to adapt procurement, personnel, and contracting procedures to meet the needs of this Commission has caused sufficient delay in the conduct of three very important areas of study respecting the Impact Aid Program:

(1) the special provisions of Public Law 874, Eighty-first Congress relating to the education of children residing on Indian lands;

(2) the relationship between payments under that program and programs of State aid for public education; and

(3) those provisions of that law which provide for payments to local educational agencies with respect to children who live in low-rent public housing.

Each of these areas is complex and needed the expertise of highly qualified persons to study them. It had been the intention of the Commission, under its Plan of Study, adopted December 14, 1979, that each of these studies either be the subject of a special contract or be dealt with by experts capable of handling the complex issues inherent in them.

Each of these studies was delayed several months because contracting them was almost impossible (normally the contract approval process takes about six months) or because normal rules would not permit compensation at rates sufficient to employ the persons qualified to do the work.

The Commission has studied these areas and expects that it will be able to report on them; however, the quality of the study has not been equal to that to which other areas of the program have been subjected or to that which the Commission expects of itself. In the time remaining it is unlikely that the complexities of these issues can be dealt with in the manner consistent with the standards set by the Commission regarding the quality and depth of the study.

THE COMMISSION'S ECONOMIC IMPACT STUDY

In addition, the Commission has been conducting an in-depth study of the economic effect of Federal activities on the fiscal ability of local educational agencies to operate their schools. In order to conduct this study the Commission is using an economic impact study to measure the fiscal impact of Federal facilities on school districts. The goal of the study is to determine whether a Federal presence in a community confers a burden or a benefit on the finances of a school district. This study represents the first comprehensive attempt to evaluate whether districts receiving Impact Aid receive a net economic benefit or burden from the presence of the Federal Government in their community.

Two complementary studies are being conducted. The focus of both has been on school districts with military bases. The first uses a case-study approach to examine, as intensively as possible, seven districts heavily impacted by military installations. It requires site visits to gather information from district, city, and county officials and to obtain the most precise, site-specific data available.

The second study covers a more extensive sample of several hundred districts. It relies on more general and accessible data compiled in or transferred to the Department of Education computer to gain an overview of the impact of Federal activities. Results from the two studies should capture, as deeply and as broadly as possible, the economic impact of Federal facilities on school district finances.

This is the first study of its kind ever attempted. The Battelle Institute report on Impact Aid to the Office of Education and to Congress in 1969 determined that such a study would be "impossible" because of data limitations, citing two problems in particular: the speculative nature of trying to determine how the site would have been used if the Federal facility were not there and the limited availability of school district data.

The National Planning Association proposal to the Office of Education in 1975 recommended that a study be undertaken, but suggested that calculations be done for communities, not school districts. The Commission has determined that an economic impact study is essential to a review of the Federal Impact Aid Program. The study should evaluate school districts if it is to reach results with policy application. The Commission has analyzed the limitations of such a study and considers it has formulated a workable approach, even though it is prepared to admit that it is impossible to determine with precision such matters as how much property tax revenue would have been generated and how many pupils there would have been. The Commission has chosen to settle for data that is less than ideal rather than discard the entire study. In the case approach, the staff of the Commission has been asking local planners and land-use experts to make their best possible projections of how the site would have been used, taking into account the topography of the site itself, the development of the region, and local needs in making their projections. For the aggregate study, it would be assumed that the site would have developed in a way consistent with the development of the rest of the county. Using county data on land use, those county-wide patterns can be extrapolated to the site itself.

Even though data such as population, employment, and income are compiled at the county rather than the school district level, reasonably good estimates can be obtained. By relying on adaptive techniques, it has been found that data gaps can be circumvented, arriving at meaningful approximations.

Time Required to Complete the Economic Impact Study

The Commission staff has made two sets of estimates of the time required to complete the economic impact study: one for the completion of the study of military impacted districts, the other if the study were expanded to include all impacted districts. The basis for the projection of the time required for each case study is based on experience in working through the computation, analysis, and writing of two case studies. Time projections for the aggregate study are based on telephone conversations with technical personnel at the Department of Education and at the five Federal agencies from which the Commission staff is seeking data.

The time necessary to complete the study of military impacted districts will be 36 weeks, or almost 26 weeks more than remains. If the study were to be extended to all types of impacted districts, the study would require 77 weeks in all, or about 67 more than are now available. This assumes that the Commission should study six districts impacted by non-military activities, including those adjacent to non-military Federal lands and those serving children residing on Indian lands, children residing in low-rent public housing, undocumented aliens, and refugee children.

The time remaining in which to conduct the study extends from about June 1 to September 1. Since the middle of February, the two analysts associated with the study have made seven site visits to districts heavily impacted by military bases. The gathering and analysis of data associated with these visits have taken up the bulk of their time. They have also been involved in formulating the framework of the two studies and reporting to the Commission and to Congress about the study. Preliminary analysis of two districts has been completed.

All work for the final Commission report under existing law should be completed by early September in order to meet the deadline for the final draft to be completed.

The time required to complete the study far exceeds the time that remains. Experience from analyzing data for two case studies has shown that a joint staff effort will enable a case study to be completed in about 4.5 weeks. The visit itself takes a small portion of that period; the bulk is needed for the laborious, painstaking computations necessary to capture with the most precision possible the impact of the facility on the district. Another week is required to analyze and write up these results, and a final week is needed to type and edit the seemingly endless series of numbers and computations. With five case studies remaining, and two partially completed, about 24 weeks would be required to complete the case study approach of military impacted districts. The study of all impacted districts would require an additional half week per case study for the site visits that have already been completed.

Preparation for the Aggregate Study

Preparation for the aggregate, computer-based study has already begun. All the education-related data has been gathered, organized, and keypunched into the Department of Education computers. This includes data on such items as property tax revenues, education costs, and number of pupils for 1500 school districts. This data will enable the computation of the costs imposed by the Federal facility.

In order to determine adequately the benefits of the facility, the Commission needs data from five Federal agencies outside the Department of Education, including the General Services Administration, Department of Defense, Bureau of Economic Analysis at the Department of Commerce, the Census Bureau, and the Internal Revenue Service. Only these agencies can provide such data as incomes of federally-connected employees, number of civilian employees, and consumption patterns necessary to compute the positive effect on district revenues of Federal facilities.

Obtaining and applying data from these five agencies will be a time-consuming task requiring, in sum, up to one month. The initial problem is simply gaining access which, agencies told the Commission staff, should take about one week. The major problem then becomes adapting and transferring data from one agency's computer to that of the Department of Education. This requires a detailed examination of the data available and how it matches requirements.

Unless the Federal agency has the same identification code as the Department of Education, the desired data is to be adapted to fit the Education Department code. The agencies contacted do not have the same identification code.

Once the transfer has occurred and the Education Department computer has generated results, the 200 districts are to be analyzed. The Commission will be be looking for relationships between key characteristics associated with bases and the net burden imposed by the facility. It will try to determine the magnitude and the significance of relationships between the net Federal burden and variables such as number of "A" and "B" pupils, base location, the number and type of base employees, and on-base sales. This will require that the 200 districts be grouped according to these characteristics, and that regressions be run to determine the relationship between the different variables and Federal impact.

Finally, during the course of the Commission's hearings, many witnesses raised questions about, and offered evidence on, types of Federal activities and policies not heretofore considered for compensation under the Impact Aid Program. Among these were the costs of complying with Federal laws and regulations and the costs of providing educational services for refugee children and the children of undocumented aliens. The Commission had not adequately prepared for the study of these questions but has determined that they are so substantial that recommendations on them are merited. At this time, were the Commission to expend the resources necessary to do these questions justice, the central part of the study of the Impact Aid Program would suffer.

For the above stated reasons, the Commission finds that reports supplemental to its Final Report should be prepared and submitted and recommends that the following legislative proposal be enacted to authorize such reports.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That (a) the Commission on the Review of the Federal Impact Aid Program, established under section 1015 of the Education Amendments of 1978 (Public Law 95-561), shall be continued for the purpose of enabling such Commission to prepare and submit to the President and the Congress not more than three reports supplemental to its final report required under the provisions of such section 1015. The first of such reports shall be submitted no later than July 1, 1981; and the last thereof shall be submitted no later than 180 days after the submission of the first thereof. Such supplemental reports shall include such information and recommendations as such Commission determines to be appropriate and shall at least include reports on studies of --

(1) the economic benefits and burdens on local educational agencies resulting from activities taking place on Federal property;

(2) the operation of the programs authorized by Public Law 874, Eighty-first Congress, with respect to children residing on Indian lands;

(3) the relationship between such programs and State programs of payments to local educational agencies, including equalization plans;

(4) payments to such agencies for the education of children residing in low-rent public housing; and

(5) the costs to such agencies of complying with Federal laws and regulations and of serving children who are in attendance at their schools by reason of Federal policies.

(b) All funds designated, allocated, or otherwise available (or to be available) to the Commission for its operating expenses shall, notwithstanding any other provision of law, be made available to such Commission, and remain available to such Commission for such purpose until expended, without regard for fiscal year limitations. In addition, with respect to the fiscal year ending September 30, 1981, the Secretary of Education shall, notwithstanding any such provision of law, make available to such Commission, from any funds appropriated to the Department of Education, such funds as may be necessary to enable the Commission to maintain its level of operations, except that the total amount so available for any month shall not exceed 110 percentum of the average monthly amount available for expenditure by the Commission during the fiscal year ending September 30, 1980.

(c) In exercising its authority to appoint and compensate necessary staff under part D of the General Education Provisions Act, such Commission shall have such authority without regard for the provisions of Chapter 51 and Subchapter III of Chapter 53 of Title 5, United States Code, regarding the classification of positions and the qualification of persons to fill such positions. Upon the expiration of the Commission all persons employed by the Commission for a period in excess of one year shall be considered as having held permanent positions in the Government service for the period of their employment by the Commission.

(d) The terms of office of the members of such Commission shall be coterminous with the duration of the Commission and the number of such members shall be equal to the number who are in office at any time, except that such number shall not exceed the number specified in such section 1015. A quorum of the Commission shall be equal to a majority of the members of the Commission who have qualified.

(e) Subsection (a) of this section shall be effective upon the submission to the Congress of a Special Report of such Commission requesting the authority provided therein.

CHARTER

COMMISSION ON THE REVIEW OF THE FEDERAL IMPACT AID PROGRAM

PURPOSE

In recognition of the responsibility of the United States Government, the Congress has declared it be the policy to provide financial assistance to those local educational agencies whose school population is impacted by the presence of Federal activities. Public Law 874, Eighty-first Congress, charges the Commissioner of Education to pay these local educational agencies a prescribed amount which is meant to compensate them for the financial burden placed upon them by reason of loss of tax revenue or provision of educational services to federally connected children or by sudden or substantial increase in school attendance as the result of Federal activities. The Education Amendments of 1978, Public Law 95-561, require a review and evaluation of the administration and operation of the Impact Aid Program under Public Law 874, including the equity of the present funding structure, the relative benefit of the program in view of its increasing costs and the limitation on available funds, and the ways in which these local educational agencies can best be assisted in meeting their educational needs. Discharge of these responsibilities requires the establishment and advice of the Commission on the Review of the Federal Impact Aid Program.

AUTHORITY

This Commission is established under section 1015 of Public Law 95-561, the Education Amendments of 1978. It is governed by provisions of Part D of the General Education Provisions Act to the extent that such provisions are not inconsistent with such section 1015.

FUNCTIONS

The Commission is required to review and evaluate the administration and operation of the Impact Aid Program under the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) including:

1) the equity of the present funding structure under Public Law 874,

2) the relative benefit of the assistance for Impact Aid under Public Law 874 in view of the increasing costs of the program and the limitation on the availability of funds, and

3) the ways in which districts of local educational agencies which are Federally impacted can best be assisted in meeting their educational needs.

The Commission is to coordinate closely its activities with activities of the Advisory Panel on Financing Elementary and Secondary Education established under section 1203 of the Education Amendments of 1978 (Public Law 95-561).

The Commission is to prepare and submit to the President and to the Congress no later than September 1, 1981, a report on the review and evaluation required by section 1015 of the Education Amendments of 1978, together with such recommendations for legislation relating to the authorization of the program and funding for the program, as the Commission deems appropriate.

STRUCTURE

The Commission consists of ten members appointed by the President, one of whom is designated by the President to chair the Commission. Members include persons who are not fulltime employees of the Federal Government and who are knowledgeable about the problems of local educational agencies in impacted areas, State and local officials, leading authorities in education and the social sciences, and from the general public.

The Secretary of Education is to assure that the Department of Education provide full support and cooperation to the Commission. The Secretary of Education is to make available to the Commission, from funds appropriated to the Department of Education, such funds as may be necessary to enable the Commission to maintain its level of operations, except that the total amount so available for any month may not exceed 110 per centum of the average monthly amount available for expenditure by the Commission during the fiscal year 1980.

The Commission is authorized (1) to appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, or otherwise obtain the services of, such professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions, as prescribed by law, and (2) to compensate the persons, the services of whom are so obtained, at such rates as the Commission determines necessary to enable it to accomplish its purposes. The terms of office of the members of the Commission are coterminous with the duration of the Commission and the number of such members shall be equal to the number who are in office at any time. A quorum of the Commission is equal to a majority of the members of the Commission who have qualified.

MEETINGS

Unless otherwise determined by the Commission, the Commission is to meet at the call of the Chair, but not less than two times each year.

Meetings are to be open to the public. Adequate public notification will be given in advance of each Commission meeting.

Meetings are conducted, and records of proceedings kept, as required by applicable laws.

COMPENSATION

Members who are not fulltime Federal employees are paid at the rate of $100 per day, plus per diem and travel expenses in accordance with Federal Travel Regulations.

DURATION

The Commission shall terminate September 30, 1981.

APPENDIX D

WARREN G. MAGNUSON, WASH., CHAIRMAN

JOHN C. STENNIS, MISS.
ROBERT C. BYRD, W. VA.
WILLIAM PROXMIRE, WIS.
DANIEL K. INOUYE, HAWAII
ERNEST F. HOLLINGS, S.C.
BIRCH BAYH, IND.
THOMAS F. EAGLETON, MO.
LAWTON CHILES, FLA.
J. BENNETT JOHNSTON, LA.
WALTER D. HUDDLESTON, KY.
QUENTIN N. BURDICK, N. DAK.
PATRICK J. LEAHY, VT.
JIM SASSER, TENN.
DENNIS DE CONCINI, ARIZ.
DALE BUMPERS, ARK.
JOHN A. DURKIN, N.H.

MILTON R. YOUNG, N. DAK.
MARK O. HATFIELD, OREG.
TED STEVENS, ALASKA
CHARLES MC C. MATHIAS, JR., MD.
RICHARD S. SCHWEIKER, PA.
HENRY BELLMON, OKLA.
LOWELL P. WEICKER, JR., CONN.
JAMES A. MC CLURE, IDAHO
PAUL LAXALT, NEV.
JAKE GARN, UTAH
HARRISON SCHMITT, N. MEX.

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

March 31, 1980

Mr. Harold Rogers, Jr.
Chairman, Commission on the Review
of the Impact Aid Program
1832 M Street, N.W., Suite 837
Washington, D. C. 20036

Dear Mr. Rogers:

Once again, the President's budget request for the Impact Aid program proposes large reductions in funds. The purpose of this letter is to ask you and the members of your Commission for some assistance.

It would be most helpful if the Impact Aid Commission could provide us with a brief interim report of what the Commission has accomplished and learned to date. Specifically, the Appropriations Committee could use a recommendation on funding priorities for the program in fiscal 1981. In other words, given the limited funds we will have available to appropriate for Impact Aid, what items in the program should have the highest priority for funding?

With the further reductions the revised budget proposes for Impact Aid, it will be difficult to even equal the fiscal 1980 appropriation. Any specific recommendations or ideas you can provide on the maintenance and operation or construction portions of the Impact Aid program will be appreciated. Since we are working on a tight time schedule, we need your report and recommendations by May 1, 1980.

The Commission has a difficult task ahead of it. I want you to know that I support your efforts and want you to be involved in advising the Committee on possible ways to fund Impact Aid in fiscal 1981.

Thank you for your assistance. We look forward to your report.

Sincerely,

WARREN G. MAGNUSON, Chairman
Labor-HEW Appropriations
Subcommittee

WGM/Ht

APPENDIX E

MAJORITY MEMBERS:
CARL D. PERKINS, KY., CHAIRMAN
WILLIAM D. FORD, MICH.
IKE ANDREWS, N.C.
GEORGE MILLER, CALIF.
AUSTIN J. MURPHY, PA.
BALTASAR CORRADA, P.R.
DALE E. KILDEE, MICH.
PAT WILLIAMS, MONT.
AUGUSTUS F. HAWKINS, CALIF.
MICHAEL O. MYERS, PA.
KOGOVSEK, COLO.

(202) 225-4368

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON ELEMENTARY, SECONDARY,
AND VOCATIONAL EDUCATION
B-346C RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515

MINORITY MEMBERS:
WILLIAM F. GOODLING, PA.
JOHN H. BUCHANAN, JR., ALA.
ARLEN ERDAHL, MINN.
DANIEL B. CRANE, ILL.
JON HINSON, MISS.
JOHN M. ASHBROOK, OHIO,
EX OFFICIO

April 1, 1980

APR 1 1980

Mr. Harold E. Rogers, Jr.
Chairman
Commission on the Review of the
Federal Impact Aid Program
1832 M Street, N.W. - Suite 837
Washington, D.C. 20036

Dear Mr. Rogers:

As you are well aware, the Administration has sent to the Congress a proposal that would represent a major policy shift from the currently authorized impact aid program. This proposal will be considered by the Congress in the next several months. As the Chairman of the House Education and Labor Committee, I am concerned that any decision that Congress makes regarding impact aid be based on an appropriate factual discussion of the program.

It is my understanding that your Commission is not planning to issue its final report until December. I am informed that the Commission has conducted hearings in Washington, D.C., Seattle, Denver and Chicago and has heard from hundreds of witnesses. While I realize the Commission's work is far from complete, I believe that the information gathered thus far would be extremely helpful to congressional decision making. Accordingly, I am requesting that the Commission consider issuing a preliminary report that would summarize the evidence gathered and submit to the Congress the Commission's preliminary recommendations concerning continuation of the impact aid program.

A timely response from the Commission will greatly aid the Congress as it responds to the Administration proposal. I trust that your Commission will expeditiously consider this request for a preliminary report.

Sincerely,

Carl D. Perkins
Chairman

CDP:jp

INTERIM REPORT
OF THE
COMMISSION
ON THE
REVIEW OF THE FEDERAL IMPACT AID PROGRAM

(to be followed by Supplemental Documentation)

The Commission on the Review of the Federal Impact Aid Program was established in accordance with section 1015 of the Education Amendments of 1978 and given the mandate that it review and evaluate the operation and administration of the Impact Aid Program, authorized by Public Law 874, Eighty-first Congress.

The Impact Aid Program was established in 1950 and payments were made through that program to local educational agencies for fiscal year 1951 and each fiscal year thereafter. Those payments amounted to $28 million in 1951 and have grown to approximately $780 million in fiscal year 1980.

The payments are made to those local educational agencies which, under the law, are so affected by Federal activities as to have had a burden placed on them thereby which merits compensation. Two kinds of burden have been recognized by the law: (1) a revenue burden arising from the fact that Federal property in the school districts of such agencies is not subject to real property taxes, and (2) a service burden arising from the fact that those agencies provide educational services for federally-connected children without having a tax base, with respect to those children, adequate to provide them with these services.

The Commission has ten members, appointed by the President on August 15, 1979, and has begun to carry out its charge under a Plan of Study adopted December 14, 1979. Under the Plan of Study, the Commission is gathering evidence on the operation of the program until the end of May, 1980; and, during the succeeding four months, it is to develop recommendations based on that evidence. The remainder of the time is to be used for writing and approving a final report.

Evidence is to be gathered both through public hearings at which all interested parties are to be given an opportunity to present views and through in-house research by the staff of the Commission. The research staff supports the hearing process by providing necessary information to the Commissioners in preparation therefor and conducts research in subject matter areas which do not easily lend themselves to examination and analysis in the hearing process.

At this time, the hearings are almost half completed and the staff research is almost one-third through its schedule. Thus far the research has three central areas of study: school finance, economics, and the education needs of federally-connected children. Each of these areas is based on intensive legal research on the background of the Impact Aid Program and the issues which gave rise to its creation and continuation during the past 30 years.

Thus far, the school finance study has concentrated on an examination of the manner in which public schools were financed at the time when Public Law 874 was first enacted, trends in school finance since that time, the current issues affecting the cost of operating schools, and, in that context, the costs resulting from Federal activities and policies. The underlying issue for the school finance study is concerning the relationship between real property taxes and the revenues necessary for the operation of public schools and the effect of Federal ownership and use of land, including the obligations inherent therein.

The reason most frequently advanced for reducing the amounts paid to local educational agencies is that the economic benefits to be derived from Federal expenditures in conjunction with its activities compensate, to some extent, for the burdens arising from those activities. No hard data was to be had on net economic benefits; and, therefor, the staff has been developing an economic impact model which, at this stage, is being used to measure, as objectively as possible, the net economic burden or benefit of Federal activities on local educational agencies. At this time, the model is being tested on a case study basis, with tests having been almost completed on two cases and being conducted on three additional cases. If it appears from these test cases that the model is usable on any consistent basis, it is expected that, within the time constraints and resources at hand, it can be adapted for wider use, involving more school districts.

The legal research conducted by the staff has, during its early stages, concentrated on the original premises upon which Public Law 874 was based and on the legal and historical background for those premises. It is clear that Public Law 874 was enacted in order to mitigate against the detrimental effects of the Federal Government's owning and using tax-exempt real property on local educational agencies which under the pattern of school finance laws of the States relied heavily upon taxation of real property for their revenues. These premises were not, and are not, based nearly so much on education as on the question of whether the Federal Government can, in carrying out its necessary and proper functions, inhibit the States and their subdivisions in carrying out their functions under the federal system devised by the framers of the Constitution.

With less than half of the evidence gathered and analysis still in the theoretical stage, the Commission is unable to make any definitive findings or recommendations. However, current proposals regarding funding for the Impact Aid Program for the coming fiscal year have raised, prematurely, a question respecting the continuation of the program as it has been known. The evidence supporting those proposals has been examined by the Commission.

INTERIM FINDINGS

The Commission has, at this time, completed only half of its evidence gathering task; no final judgments can be made regarding recommendations for changing existing law based on the evidence gathered to date. The Commission, through the hearing process and staff research, has gathered sufficient evidence to formulate general policies which can be the basis for the development of those recommendations.

A. VALIDITY OF THE UNDERLYING PREMISES OF THE PROGRAM

At this point, the evidence makes clear that many of the problems Public Law 874 was originally enacted to address still exist today. The Federal Government still owns vast areas of land and uses that land as places of residence for children in attendance in public schools and as places of employment for their parents. School districts still rely on property tax revenues to support their operations. Federal ownership and use of land thus continue to deprive local educational agencies of substantial amounts of revenues while placing children in their schools without adequate compensation for the cost.

While some school districts today rely less heavily on local real property taxation and while there has been some increase in the percentage of funds for public education that come from State sources, these changes in the pattern of financing public schools that have occurred since 1950 are not great enough to justify discontinuing the Impact Aid Program in the foreseeable future. They are significant enough, however, to merit adjustments in the program with respect to the method by which the amounts of payments are computed. These adjustments are more in line with determining a more accurate estimation of actual burden than with making any major changes in the underlying policies of the program, however.

Specifically, local educational agencies which rely upon real property taxes for revenues to support the operation of their schools continue to derive those revenues from taxation of residential property and commercial property; both are major factors in the tax base. So long as the Federal Government owns and uses land as places of residence and places of employment, it should carry a responsibility similar to that of a private land owner.

The Commission finds, as of this time, that the evidence thus far before the Commission --

(1) shows little, if any, dispute respecting the Federal obligation to assist in paying for the local share of the cost of educating children who both reside on, and live with a parent employed on, Federal property; and

(2) shows with respect to the education of children who either live in low-rent public housing, or live with a parent employed on Federal property, there is no basis to justify a policy distinction between (1) and (2) at this time.

B. STATE AND LOCAL LAWS

Witnesses representing the Administration contended that the economic benefits resulting from Federal activities are sufficient to compensate local educational agencies for a major part of any burden placed upon those agencies by the Federal Government. The Commission is giving this contention substantial consideration, questioning witnesses on economic impact issues, and tentatively finds:

(1) that if there are net economic benefits to the affected localities, the revenues from those benefits are primarily in the form of income and sales taxes imposed and used by State government and local units of general government, rather than by local educational agencies;

(2) that those revenues can only become available to local educational agencies through substantial changes in State laws which would affect fiscal independence of those agencies;

(3) that Federal policy should be neutral with respect to the relationship between the States and their subdivisions and with respect to fiscal independence of local educational agencies; and

(4) that the policy in favor of treating the Federal Government, to the extent practicable as a private owner is sound and should be continued.

C. SCOPE OF THE STUDY

The evidence before the Commission which would support major reductions in the Impact Aid Program is based on a contention that the Federal Government must reduce expenditures generally and that among Federal priorities Impact Aid is of less importance than other items in the Federal budget. This contention does not speak to the merits of the program on its own terms but to the program's relative merits when measured against other meritorious Federal activities. The Commission finds:

(1) that budgetary considerations are political questions which change from year to year, based on many factors beyond the scope of this review and evaluation of the Impact Aid Program;

(2) the degree to which Federal activities constitute a burden on local educational agencies is relatively constant over the years and can be determined based upon factors within the scope of this review and evaluation;

(3) that budgetary considerations are not relevant to determining the magnitude of burden placed upon local educational agencies;

(4) that budgetary considerations, if they are to be a factor in the amounts paid to local educational agencies, should bear on determining the overall levels of appropriations for the program, and

(5) that, if those levels of appropriations are insufficient to compensate local educational agencies for the burdens placed upon them, the funds appropriated for the program should be allocated within the program on the basis of priorities which take into consideration the magnitude of the types of such burdens.

D. SUBJECTS OF RECOMMENDATIONS

The Plan of Study adopted by this Commission included as a means for developing recommendations a series of special studies designed to focus upon the issues about which recommendations would be appropriate. The evidence to the Commission thus far appears to justify a decision to make recommendations on a number of issues. The Commission finds that recommendations should be made in the final report regarding the following issues:

(1) The kinds of ownership and use of land by the Federal Government which warrant consideration in an Impact Aid program, including, but not limited to, Indian lands, low-rent public housing, post offices, and leasehold interests;

(2) The criteria, if any, which school districts should satisfy to be eligible for Impact Aid;

(3) Whether in-lieu of taxes payments from other agencies should be taken into consideration in determining the amount of Impact Aid payments;

(4) Compensation for the increased costs caused by sudden and substantial enrollments resulting from Federal activities;

(5) Whether the present provisions for including children of Cuban refugees should be expanded to include Indochinese refugees and children of undocumented aliens;

(6) Whether local educational agencies should be compensated for the costs they incur in complying with Federal laws and regulations;

(7) The method of calculating the amounts to which local educational agencies are entitled;

(8) The obligation of the Federal Government with respect to the education of federally-connected children;

(9) State treatment of Impact Aid payments in their programs of payments to local educational agencies, including equalization plans;

(10) The treatment of federally-operated schools for military dependents; and

(11) Priorities in allocating funds when appropriations are insufficient to satisfy all entitlements.

E. CONTINUATION OF THE PROGRAM

Subsequent to the establishment of this Commission, the Administration submitted to the Congress a budget request which would, were it adopted by the Congress, result in a substantial reduction in the level of appropriations for the Impact Aid Program for fiscal year 1981 from those of fiscal year 1980 and preceding fiscal years. This request has been a major subject of concern during the Commission's hearings.

This situation began with the first witnesses at the Commission's first hearing when the Administration's representatives testified in favor of its budget request. The situation has continued to the point that many people who testified expressed concern about the continuation of the program even while the Commission is conducting its study.

It was in this context that the Commission was requested to submit to the Congress an interim or preliminary report and to make a recommendation concerning funding continuation of the program.

The Commission finds:

(1) that the hearings have revealed that any major reduction in the level of appropriations for Public Law 874 will cause serious disruptions in the operation of many schools and, in the case of the more heavily impacted districts, school closings;

(2) that there are local educational agencies (such as those with school districts wholly within the boundaries of military installations) which have limited or no local tax base and are, therefore, extremely or entirely dependent upon Impact Aid payments for their operation and for which payment of less than the full amounts to which they are entitled under existing law threatens their ability to continue operations;

(3) that any such reduction would so change the program as to defeat the value of the final report of this Commission;

(4) that on the basis of evidence about such factors as mobility of students, the disproportionate number of children in need of special services, the sudden fluctuation in enrollments, and the competition with private industry before the Commission there is justification for continuation of the program with some refinements; and

(5) that the basic premises of the original program have validity today and will continue to have that validity until there is a major change in the structure of financing public education.

APPENDIX G:

THE ECONOMIC IMPACT MODEL

The economic impact model measures the impact of the base and of alternative site use on the expenditures and revenues of the local educational agency. The model determines the net impact of the base by comparing the burden or benefit to the agency of the base itself with the burden or benefit of alternative use. Another way of performing the same calculation is to compare the difference between the expenditures imposed by the base and alternative use with the difference between the revenues contributed by the base and alternative use.

The computation is performed in the following way:

Burden = (Expenditures, Base - Revenues, Base)
 - (Expenditures, Alternative Use - Revenues, Alternative Use)

The same calculation can also be structured as follows:

Burden = (Expenditures, Base - Expenditures, Alternative Use)
 - (Revenues, Base - Revenues, Alternative Use)

The economic impact model is structured around a series of operations designed to capture the fiscal impact of a military base on an agency. These arithmetic operations estimate the magnitude of various aspects of the base's impact. They rely on an assortment of data that is as specific and current (for application to fiscal year 1979) as possible.

The model was adapted differently in each case study because the economic activity of each area was distinctive and the quality of data varied. The operations and data applied to each study, consequently, were slightly different.

These operations and their various applications are described below. This description is followed by an illustration of the model that is presented in the same sequence as the description. The variables in each operation and the operations themselves are shown using sample data; the source of each figure used by the study is listed alongside the operation. A discussion of the actual data used by the study is presented in the footnotes that accompany the model. These footnotes explain how the data for each case study was obtained, updated, and adapted to fit the area of economic activity.

A Summary of the Model

Expenditures under current use are determined by multiplying the number of pupils in a school district as the result of a Federal activity by the average per-pupil expenditure.

The number of children in a district as the result of a Federal activity is equal to the sum of the number of children of persons employed on the base and the number of children of employees whose jobs were induced by the spending of base employees and their families. The number of induced employees is determined from the use of an employment multiplier that calculates the non-Federal employment in a community resulting from spending by families of base employees.

The per-pupil expenditure for a local educational agency is determined on the basis of average per-pupil expenditures in the State in which the agency is located and the weighted average of per-pupil expenditures in comparable school districts.

Revenues affected by Federal activities are determined by calculating the Federal contribution to four primary sources of revenue: residential property taxes, commercial property taxes, State aid for local educational agencies, and miscellaneous "other" local revenue.

Residential property tax revenues are calculated by multiplying the residential property revenues in the district by the percentage of residential income in the district that is attributable to base employees.

Commercial property tax revenues are calculated by multiplying the total commercial property tax revenue in the district by the percentage of consumption in the district that is attributable to the base.

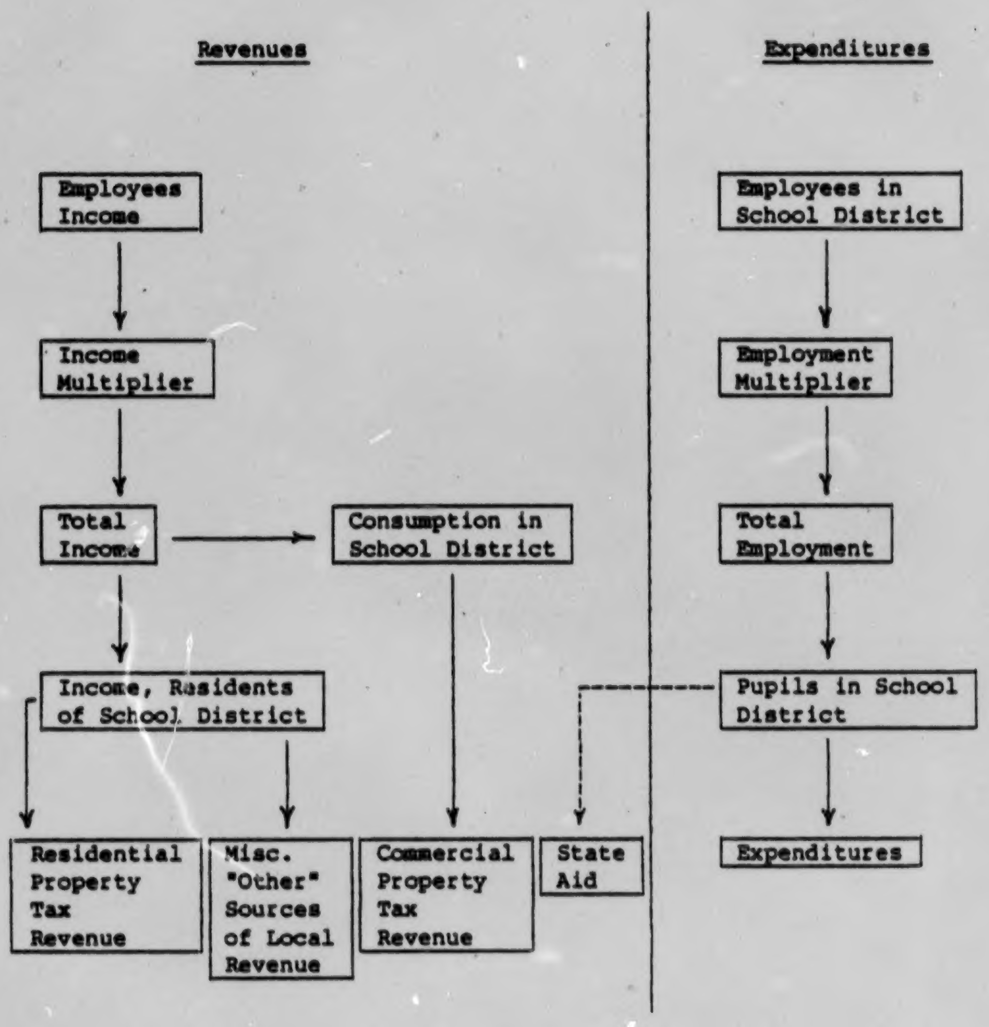
State aid for local educational agencies is affected by Federal activities because most State aid payments take into consideration the assessed valuation of taxable property and the number of pupils in the district. When property is exempted from taxation or when the number of children increases, the average assessed valuation per pupil decreases and the amount of State aid increases. To determine the amount of State aid triggered by the base, the model inserts into the State formula the amount of assessed valuation associated with the places of residence, employment and shopping of base-attributable employees and the number of schoolchildren associated with these employees.

The Federal contribution to miscellaneous "other" local revenue, which includes local income taxes, fees, and charges, is determined by multiplying total miscellaneous "other" revenue in the district by the proportion of income or population that is attributable to base employees. (The variable used depends on whether the tax is a function of income or population.)

The same procedures are used to calculate the fiscal effect of alternative use of the site, except that judgments are exercised as to what the alternative use would have been. Alternative use is determined on the basis of local experts' projections about how the base site would have been used had there never been a Federal presence. When the Federal installation was established before World War II, however, this alternative use is determined on the basis of how the site would be used if the Federal base were to close.

A flow-chart description of the way that revenues and expenditures attributable both to the base and to alternative use are calculated is shown below:

THE ECONOMIC IMPACT MODEL


Revenues
Expenditures
Employees Income
Income Multiplier
Total Income
Consumption in School District
Income, Residents of School District
Residential Property Tax Revenue
Misc. "Other" Sources of Local Revenue
Commercial Property Tax Revenue
State Aid
Employees in School District
Employment Multiplier
Total Employment
Pupils in School District
Expenditures

A summary of the computations required to determine the net economic impact of a military base on a local educational agency is presented below:

Expenditures

[Base-connected or Alternative Use Employees
x Employment Multiplier x Pupils/Employee]
x Per-pupil Expenditure

Revenues

a) **Residential Property Tax Revenues** =

No. of Base or Alternative Use Employees x Average Personal Income
x Income Multiplier x Income, District/Income, County or SMSA
= Income, Base or Alternative Use Employees, District

Income, Base or Alternative Use Employees, District/Income, District
x Residential Property Tax Revenues, District

b) **Commercial Property Tax Revenues** =

No. of Base or Alternative Use Employees x Average Personal Income
x Income Multiplier x Consumption/Income
= Total Consumption, Base or Alternative Use Employees

(Total Consumption, Base or Alternative Use Employees - Base Sales)
x Consumption, District/Consumption, County or SMSA
= Base or Alternative Use Employees' Consumption, District

Base or Alternative Use Employees' Consumption, District/Total Consumption, District
x Commercial Property Tax Revenue, District

c) **State Aid**

State aid attributable to the base is calculated by inserting base-attributable Average Daily Attendance (ADA) and assessed valuation into the State aid formula. State aid attributable to alternative use is calculated by substituting the ADA and assessed valuation of the site under alternative use into the State aid formula.

d) **Miscellaneous "Other" Local Revenue**

Revenue Associated with Income:
Income, Base or Alternative Use/Income, District
x Miscellaneous "Other" Local Revenue, District

Revenue Associated with Population:
Population, Base or Alternative Use/Population, District
x Miscellaneous "Other" Local Revenue, District

Net Impact

[Expenditures, Base - Revenues, Base]
- [Expenditures, Alternative Use - Revenues, Alternative Use]

Another way of looking at the same calculation:

[Expenditures, Base - Expenditures, Alternative Use]
- [Revenues, Base - Revenues, Alternative Use]

A Detailed Description of the Model

I. Current Expenditures

To compute current expenditures attributable to the base, data are required on the number of schoolchildren of employees who work at the base, the number of schoolchildren of employees at jobs induced by these base employees, and finally the per-pupil expenditure for those schoolchildren.

The first figure, the number of schoolchildren associated with base employees, is provided by the Department of Education.

Estimating the number of schoolchildren associated with induced employees is a two-step process that first requires the calculation of the number of induced job-holders who live in the district. This figure is calculated by dividing the amount of induced income accruing to district residents by the average income per job in the area. The amount of induced income accruing to district residents is the product of the total induced income in the area and the percentage of the area population that lives in the district. (The model assumes that induced employees have the same residential patterns as the rest of the population in the area.) Section IIA of the model, which describes the procedure for estimating the residential property tax revenue attributable to the base, shows how total induced income is determined.

Once the number of induced job-holders in the district has been determined, the next step is to estimate the number of schoolage children associated with these employees. The product of the pupils per job ratio and the number of induced jobs yields the number of induced schoolchildren. For each of the four districts studied, this ratio was approximately 0.4.

The sum of the number of base-connected and base-induced schoolchildren yields the total number of schoolchildren living in the district that are attributable to the base. To determine the total costs that these children impose on the local educational agency, their number is multiplied by the average per-pupil expenditure for the agency. Because per-pupil expenditure for the impacted agency varies with the amount of Impact Aid it receives, the model relies on two per-pupil expenditure figures: the State average and the weighted average of the per-pupil expenditures in the districts determined to be comparable to the one under study.

II. Current Revenues

A. Residential Property Tax Revenue. The determination of residential property tax revenue attributable to the base requires three numbers: the amount of taxable income among residents of the district whose employment is attributable to the base, the taxable income among all residents of the district, and total residential property tax revenues received by the local educational agency. The product of the total residential property tax revenue and the percentage of residential district income constituted by the income of base-attributable families yields base-attributable residential property tax revenue. The assumption underlying this operation is that the amount of residential property tax that families pay is proportionate to their income. The amount of residential property tax revenue collected in a given year by a local educational agency is available from that agency.

Taxable income attributed to the base includes both the income of base employees living in taxable residences in the district and the amount of induced income accruing to district residents. Base-connected employees who pay residential property taxes include civil service employees, non-appropriated fund employees, contractors, and military employees living off base (excluding those who live in tax-exempt mobile homes in the district). The incomes of the working spouses associated with these employees is also considered in estimating property tax payments.

Each group's direct income is calculated by multiplying the average salary of employees in the group by the actual number of employees in that group. This product is then multiplied by the personal income adjustment, which includes these employees' non-wage income such as dividends, interest, rent, and employer contributions to pension, health, and welfare funds. Personal tax contributions to social insurance are deducted from this adjustment.

The amount of induced income generated by each group of employees is calculated by multiplying that group's direct income by the appropriate net earnings multiplier. These net multipliers are taken from the results of Bureau of Economic Analysis studies of military base impacts on local communities. The Commission has incorporated the multipliers into a range to encompass all the possible effects when a single multiplier is applied to particular communities. The size of the multiplier differs for each group of employees as a result of the different spending habits of these groups. The net multiplier effect from the spending of military employees, for instance, is less than the effect of spending by civilian employees because the military spends money on base that never circulates in the local economy.

The lower range of the net multiplier applied to working spouses is zero to allow for the possibility that all these spouses may fill the jobs induced by base employees. To attribute induced income to the spending of working spouses in this situation would be to count twice the income induced by base employees.

The amount of induced income accruing to district residents is the product of the amount of income induced by base employees in the area and the percentage of the area population residing in the district. The model assumes that induced employees living in the district have the same average income as those living throughout the area. The total income attributable to the base is the sum of the direct income of each group of base employees living in taxable residences in the district and the induced income accruing to district residents.

The amount of taxable personal income in a district was determined differently in each case study. (See note 13, infra.) The determination was easiest in Escambia County, where the county is coterminous with the district, because county data could be used. In the other case studies, district income was computed by multiplying the per capita income of the county by the population of the district. The district population, in turn, had been computed from data on enrollment in the district and county, and population in the county. (See note 12, infra.)

Dividing the income attributable to the base by the total income among taxable residents in the district yields the percentage of income among taxable residents of the district accounted for by the base. This figure, multiplied by the total residential property tax revenue from the district, yields the base-attributable residential property tax revenue.

B. Commercial Property Tax Revenue. The most important data needed to estimate the amount of commercial property tax revenue generated by the base are the following: the total income attributable to base employees living in the area, the percentage of income spent on retail goods and taxable services, the amount of on-base purchases by military employees in the area, the percentage of spending that is done in the district, total retail sales and receipts from taxable services of district establishments, and the commercial property tax revenue received by the local educational agency.

The object of collecting these data is to determine what percentage of retail sales and taxable services in the district was attributable to base employees and, ultimately, the percentage of commercial property tax revenue that was contributed by base-attributable employees. The model assumes that the amount of property tax paid by commercial establishments is proportionate to their sales.

The term "area" refers to the region assumed by the model to be the locus of residents' commercial activity. Where the school district is part of a metropolitan area defined by the Census Bureau as a Standard Metropolitan Statistical Area (SMSA), the model uses the SMSA as the relevant area; otherwise, the model uses the county in which the district is located as the area of commercial activity. (The county is defined by the Burea of Economic Analysis as the locus of commercial activity in its economic impact studies.) In the Commission's case studies, the area in which commercial activity was circumscribed included the following: for Bellevue, the Omaha SMSA; for Chambersburg, Franklin County; for Douglas, Pennington County; and for Escambia County, the Pensacola SMSA.

The procedure used to calculate base-attributable income in the area is identical to the procedure used to calculate the direct and induced income for each group of employees in determining residential property tax revenue. Because some employees who pay no residential property taxes in the district do make purchases there, additional groups of employees are considered--including military employees living on base, military employees who live off base in tax-exempt mobile homes, military employees who live outside the district but within the area, civil service and non-appropriated fund employees living outside the district but within the area, and the working spouses of all these employees.

The percentage of personal income spent on retail goods and taxable services in the United States was 59.3 percent in 1977, the latest year for which data were available. The total consumption of base-attributable employees is calculated by multiplying their income by this national percentage of consumption to income. Not all consumption, however, is done at taxable commercial establishments: military employees and retired military personnel do a significant amount of their shopping at tax-exempt stores on base. To find the amount of on-base purchases made by military employees living in the area, the percentage of base purchases made by military residents of the area is multiplied by total on-base purchases. The proportion of base purchases made by area residents is estimated by dividing the payroll of these area residents by the sum of the total military payroll for the base and the income of retirees living in the area. The on-base purchases of military residents in the area is then subtracted from their total consumption to yield their off-base consumption. To military employees' off-base consumption is added the consumption of civilian and induced employees; this sum is the total off-base consumption of base-attributable employees.

The next step is to estimate the percentage of off-base consumption that was done within the district by base-attributable employees. This percentage is estimated by dividing the total sales and receipts of commercial establishments in the district by the total sales and receipts of all establishments in the area. The model assumes that residents of the area do all their shopping in that area, and that no purchases are made by residents from outside the area. The model also assumes that these base-attributable employees are as likely as the other residents of the area to shop in the district. The ratio of district sales to area sales would therefore indicate the percentage of off-base consumption done in the district by area residents.

With this information, the amount of retail goods and taxable services purchased in the district by base-attributable employees can be estimated. This is done by multiplying their total off-base consumption--the difference between their total consumption and their on-base purchases--by the percentage of off-base consumption done in the district (the ratio of district sales to area sales). The result is the amount of base-attributable purchases in the district that contribute to commercial property tax revenue.

To find the final figure--how much commercial property tax revenue in the district was produced by purchases of base-attributable employees--the commercial property tax revenue of the district is multiplied by the percentage of total purchases in the district that were made by base-attributable employees. The commercial property tax revenue collected by a local educational agency in a given year is available from that agency. The base-attributable portion of district purchases is estimated by dividing the amount of base-attributable purchases in the district by total district sales. The assumption underlying this procedure is that the amount of property tax that commercial establishments pay is proportionate to their sales. The model assumes that the percentage of district sales attributable to base employees is equivalent to the percentage of commercial property tax revenue that they acccounted for in the district.

C. General Fund State Aid. The State provides two types of general aid to the local educational agency: categorical funds and non-categorical funds. Categorical funds are tied to specific education programs such as special education and vocational education. Non-categorical aid, which provides the bulk of State aid, is to be used by the schools for general maintenance and operation.

The model assumes that base-attributable schoolchildren enrolled in programs receiving categorical aid from the State are as likely as non-base-attributable children to be in these programs. Therefore, the model treats categorical State aid as a function of ADA and computes the amount of categorical aid triggered by base-attributable children by multiplying the amount of categorical State aid that the agency receives by the percentage of district children who are base-attributable.

Non-categorical State aid to the four districts studied is a function of the assessed valuation of taxable real property and the number of pupils in the district. State aid increases with decreasing assessed valuation per pupil. The model calculates the amount of base-attributable State aid by first estimating the amount of assessed valuation and the number of schoolchildren associated with base-attributable families; these figures are then inserted into the State formula.

The amount of assessed valuation associated with base-attributable families is estimated in a two-step process. The revenue from property taxes on the homes and shopping places of base-attributable families has already been estimated in the sections in which base contributions to residential and commercial property tax revenue were calculated (see sections IIA and IIB, supra). Because the place of employment of base employees--the military base--pays no taxes, no estimate has to be made of its assessed valuation. The ratio of the property tax revenue contributed by base-attributable families to revenue contributed by all district families is likely to reflect the proportion of district assessed valuation associated with base-attributable families. The model estimates the amount of assessed valuation associated with base-attributable families by multiplying the total assessed valuation of the district by the percentage of the district's property tax revenue that is attributable to the base (see sections IIA and IIB, supra). This figure, along with the number of base-attributable children determined in section I, is plugged into the State aid formula to determine the amount of non-categorical State aid accounted for by the children of base-attributable employees.

D. Miscellaneous "Other" Local Revenue. The types of non-property tax revenue raised by the local educational agency varied among the districts. All agencies earned interest from investments and raised revenue from a variety of license fees, rentals, and other charges. In some cases these revenues came from the county government. In Chambersburg, local income taxes were levied.

Investments by local educational agencies are usually made when agency revenues temporarily exceed expenditures. The model treats the interest earned on these investments as a function of total general fund revenue. To determine how much of the total annual interest was attributable to the base, the model multiplies the base-attributable portion of total revenues--property tax revenue, State aid, and Impact Aid--by the total interest earned on investments.

The model treats license fees, rentals, and other charges as a function of the number of students in the district. The total amount of this revenue is multiplied by the percentage that base-attributable schoolchildren constitute of the total number of schoolchildren.

In Chambersburg, the local taxes levied are the earned income tax, the per capita tax, the employee tax, and the real estate transfer tax. Military personnel are exempt from all these taxes as a result of the Soldiers and Sailors Relief Act. The earned income tax is a tax on wages and salaries and on business profits. The model treats the revenue from this tax as a function of civilian income; it determines the base-attributable portion by multiplying total earned income tax revenue by the percentage of total civilian taxable income in the district attributable to base employees. The per capita tax is levied on each individual in the district; the model treats it as a function of the number of schoolchildren in the district, multiplying the total per capita tax revenue by the percentage of total schoolchildren that is constituted by base-attributable civilian schoolchildren. The employees' tax is a $10 tax levied on each employee working in the district; the model determines the amount of employee tax revenue attributable to base employees by multiplying the number of base-attributable civilian employees and their working spouses by $10. The real estate tax is a tax on the transfer of real estate; it increases as the value of property transferred increases. Because the amount of property tax paid on property also increases directly with the value of the property, the model treats real estate tax revenue as a function of property tax revenue. The model assumes that civilian base employees are as likely to buy and sell real estate as are other civilian employees, and estimates the amount of base-attributable real estate tax revenue by multiplying the total real estate tax revenue by the percentage of property tax revenue attributable to the base.

III. Alternative Use Expenditures

Projecting the current expenditures imposed on the local educational agency by alternative use of the site involves data and procedures similar to those used to compute base-attributable current expenditures.

Data is needed on the number of schoolchildren of employees who would work at the site, the number of schoolchildren of employees at jobs induced by site employees, and the per-pupil expenditure for the schoolchildren. Total alternative use expenditures are calculated by multiplying the number of site-attributable schoolchildren by the per-pupil expenditure for these schoolchildren. Unlike calculations for base expenditures, however, that rely on Department of Education data on the number of base-connected schoolchildren, the model must estimate the number of schoolchildren associated with employees who would work on the site.

To estimate the number of schoolchildren associated with the site, the model first must determine how many employees there would have been under alternative use and how many of these employees would have lived in the district. These calculations are described in detail in section IVA, which also discusses the estimation of alternative use-attributable residential property tax revenue. Once the number of these employees has been estimated, the number of working spouses can also be calculated. The number of schoolchildren associated with these families is then the product of the number of employees (and their working spouses) and the pupil per job ratio for the area. This ratio is the same one used in section I to determine base-attributable expenditures.

The number of schoolchildren of induced employees is estimated using the same procedure as used in section I. First the amount of induced income accruing to district residents is divided by average income per job in the region. The amount of induced income accruing to district residents is the product of the total induced income from site employees in the area and the percentage of the area population that lives in the district. The number of schoolchildren associated with these job-holders is then found by multiplying the number of induced jobs by the pupil per job ratio.

The total costs that the local educational agency would incur is estimated by multiplying the sum of site-connected and site-induced schoolchildren by two per-pupil expenditure figures: the State average, and the weighted average for comparable districts. The assumptions underlying this procedure for determining the expenditures imposed by alternative use are, of course, that the number of employees per acre, schoolchildren per job, average income, and the amount of per-pupil expenditures associated with the site would be the same under alternative use as they are in the appropriate areas today.

IV. Alternative Use Revenues

Projecting the revenues that would have been attributable to the site under alternative use involves procedures and data similar to those used in calculating base-attributable revenues. There are, however, two significant differences. Because the site would have yielded property tax revenues if the base were never established, the model must be adjusted to include those revenues. To estimate the amount of revenue that would have been generated, projections must be made about the use of the base site and estimates made about the current assessed value of commercial, industrial, and agricultural property in the district. In addition, data about the population, income, and residence of base employees, which is provided by the military base for use in the model, is not available for alternative use employees. The model must rely on county data and the projections of local planners to estimate these three variables.

To estimate the amount of property tax revenues that the site itself would yield, data are first required on how many acres would be used for residental, commercial, industrial and agricultural purposes. After these projections are made, data must be obtained on the average tax per acre that is currently yielded by each type of land use. The amount of revenue attributable to each type of use is simply the product of the number of taxable acres and the appropriate tax per acre. The total revenue attributable to the site itself is then the sum of revenue generated by each type of use.

To determine the number of taxable acres developed for each purpose, the model multiplies the planners' projections about the number of acres that would have been used for that purpose by the current percentage of total land in the area that is actually subject to property taxes (land used for roads, institutions, and utilities, for example, is not subject to property tax). Projections on how the site would have been used if the base were not established represent the range of estimates by local experts. (See Attachment II of each profile in Chapter III.B, supra, for projections regarding the proportions of each site that would have been used for residential, commercial, industrial, and agricultural purposes.)

To estimate the property tax revenue yielded from commercial, industrial and agricultural use of the site, the number of taxable acres for each use is then multiplied by the average revenue yielded per acre by those same sectors in the district today. The operation is based on the assumption that each sector would produce as much property tax revenue per acre under alternative use as it does today. The product is the total property tax revenue from each sector on the site. Residential property tax revenue from the site is treated differently because the model estimates residential property tax revenue generated under alternative use in the same way that it estimates base-attributable residential property tax revenue. The model assumes that residential property tax revenue is proportionate to residents' income.

To find the total income of residents living on the site, the model first estimates the number of employees working on the site, the number of these employees that would have lived in the district, and their average income. The total number of employees working on the site is estimated by multiplying the number of taxable acres by the number of employees per acre for each sector in the county today. The total number of employees working at the site is the sum of the number of employees for each land use.

To estimate the number of these employees that live in the district, the model assumes that these employees would have been as likely to live in the district as would civil service employees working on the military base today. To estimate the number of employees who live in the district, therefore, the model multiplies the number of employees in each sector by the percentage of civil service employeees working at the base who live in the district. Farm proprietors are treated differently from other employees; it is assumed that they all live on the farms they own.

To find the total income of employees for each sector, the model multiplies the number of employees in each sector by the average wage and salary earned by county employees in each sector today.

A. Residential Property Tax Revenue. The projection of the amount of residential property tax revenue that would be attributable to the site under alternative use requires three figures: the amount of taxable income among residents of the district whose employment is attributable to the site, the taxable income among all residents of the district, and the total residential property taxes collected by the local educational agency. As with current use, site-attributable residential property tax revenue will be the product of the percentage of residential district income attributable to alternative use families and total residential property tax revenues.

Taxable income attributable to the site would include the income of site employees living in the district, the income of their working wives, and induced income accruing to district residents. Four types of employees are considered: commercial, industrial, farm, and farm proprietors.

Each group's direct income is calculated by multiplying the average salary of group employees in the county by the number of employees--the latter computed from local planners' projections about the percentage of the site that would have been used by each sector, and the number of employees per acre in each sector in the county today. This product is then multiplied by the current personal income adjustment, which includes these employees' non-wage income.

The amount of induced income that would have been generated by each group is calculated by multiplying that group's direct income by the net earnings multiplier. The model assumes that alternative use employees would have had the same spending habits as base civil service employees and therefore uses the same net multiplier for both groups. The lower bound of the net multiplier range for working wives is zero to allow for the possibility that all of these spouses would have filled jobs induced by site employees.

The amount of induced income accruing to district residents is the product of the total amount of income induced by site employees in the area and the percentage of the area population that would have been residing in the district. This percentage is the ratio of district population under alternative use to area population under alternative use. The population associated with alternative use of the site can be calculated in the same way that base population was: by multiplying the number of site employees living in the district by the population per employee ratio. The district population under alternative use is estimated by subtracting the base-attributable population and adding the alternative use-attributable population to the current district population. The population of the area can be calculated in a similar fashion: the number of base-attributable employees in the area is multiplied by the population per employee ratio for the area and then subtracted from the total area population. Population from alternative use is added to the remainder by multiplying the number of alternative use employees living in the area by the population per employee ratio. Alternative use employees are assumed to have the same residential patterns as do civil service base employees.

The total income which would have been attributable to the site under alternative use is the sum of the direct income of each group of base employees living in the district and the induced income accruing to district residents.

Dividing the income attributable to the site by the current income among taxable residents of the district yields the percentage of total taxable income accounted for by the alternative use. Site-attributable residential property tax revenue is the product of this percentage and the total residential property tax revenue currently collected by the local educational agency.

B. Commercial Property Tax Revenue. The most important data needed to estimate the amount of commercial property tax revenue from alternative use of the site are the following: the total income attributable to base employees living in the area, the percentage of income spent on retail goods and taxable services, the percentage of spending that would have been done in the district, total retail sales and taxable service receipts of district establishments, and the commercial property tax revenue currently collected by the local educational agency.

The object of collecting this data is to determine what percentage of retail sales and taxable services in the district would have been attributable to alternative use employees. The model assumes that these employees would have accounted for a percentage of commercial property tax revenue equivalent to the percentage of district purchases that they made. In cases where there would have been commercial facilities on the site under alternative use, the model took steps to avoid double-counting commercial tax contributions from alternative use employees that might also have been included when commercial tax payments by facilities on the site were considered. (See note 25, infra.)

The procedure used to calculate alternative use-attributable income is identical to the procedure used to calculate the direct and induced income for each group of employees in determining residential property tax revenue. Because some of the site employees who do not live in the district would still shop there, those employees who live in the area, but not in the district, are included as well as those who live in the district. The number of these employees is calculated by multiplying the number of total alternative use employees in each sector by the percentage of civil service employees working at the base who live within the area but outside the district.

The percentage of personal income spent on retail goods and taxable services in the United States was 59.3 percent in 1977, the latest year for which data were available. The total consumption of site-attributable employees is projected by multiplying their income by this national percentage.

The next step is to estimate the percentage of this consumption that would have been done within the district. This percentage is different from the current use percentage--which the model estimates by taking the ratio of district sales to area sales--because the degree of commercial concentration in the area would have been different under alternative use. To estimate the extent of the difference, the model multiplies the current use percentage by the percentage change from current to alternative use in the ratio of consumption by district residents to consumption by area residents. This change in the ratio of district to area consumption under alternative use approximates the extent of difference in the ratio of district sales to area sales.

The amount of retail goods and taxable services purchased in the district by alternative use-attributable employees is estimated by multiplying their total consumption by the percentage purchased within the district. To find how much commercial property tax revenue these purchases would have produced, the percentage of total purchases in the district made by alternative use-attributable employees is multiplied by the total commercial property tax revenue collected by the local educational agency. The alternative use-attributable portion of district purchases is estimated by dividing the amount of alternative use-attributable purchases in the district by total sales in the district. The assumption underlying this procedure is that the amount of commercial property tax revenue commercial establishments pay is proportionate to their sales.

C. General Fund State Aid. The State provides two types of general aid to the local educational agency--categorical and non-categorical funds. The model assumes that alternative use-attributable schoolchildren enrolled in programs receiving categorical aid from the State are as likely as other children to be enrolled in these programs. Therefore, the model treats categorical State aid as a function of ADA and computes the amount of categorical aid triggered by alternative use-attributable children first by finding the proportion of children currently enrolled in the district that would have been constituted by alternative use-attributable schoolchildren and then multiplying by the amount of categorical State aid that the agency currently receives.

Non-categorical State aid to the four districts studied is a function of the assessed valuation of property and the number of pupils in the district. The model projects the amount of alternative use-attributable State aid by first estimating the amount of assessed valuation and the number of schoolchildren connected with alternative use-attributable families, and then inserting these figures into the State aid formula.

The amount of assessed valuation associated with alternative use-attributable families is a function of the property tax revenue they would have generated. (See introduction to section IV and sections IVA and IVB, supra.) The ratio of the property tax revenue that alternative use-attributable families would have contributed to the total property tax revenue currently collected is assumed to reflect the proportion of district assessed valuation that alternative use-attributable families would have accounted for. The model estimates the amount of assessed valuation attributable to alternative use families by multiplying the percentage of total property tax revenue that they would have contributed by the current assessed valuation of the district. This figure, along with the number of alternative use-attributable children estimated in section III, is inserted into the State aid formula to project the amount of non-categorical State aid that would have been triggered by the schoolchildren of alternative use employees.

D. Miscellaneous "Other" Local Revenue. The types of non-property tax revenue raised by the local educational agency varied among the districts. The model treats the interest earned on investments by local educational agencies as a function of total general fund revenue. To determine how much of the total annual interest would have been attributable to alternative use families, the model multiplies the alternative use-attributable portion of total revenues--property tax revenue, State aid, and Impact Aid--by the total interest earned on investments.

The model treats license fees, rentals, and other charges as a function of the number of students in the district. The total amount of this revenue is multiplied by the percentage of total schoolchildren that would have been composed by the schoolchildren of alternative use-attributable employees.

In Chambersburg, the model estimates the contribution of alternative use-attributable employees to the earned income tax, the per capita tax, the employee tax, and the real estate transfer tax. The model treats the revenue from the earned income tax as a function of income; it determines the alternative use-attributable portion by multiplying total earned income tax revenue by the percentage of total taxable income in the district attributable to alternative use employees. The per capita tax is levied on each individual in the district; the model treats it as a function of the number of schoolchildren in the district, multiplying the total per capita tax revenue by the percentage of total schoolchildren constituted by alternative use-attributable schoolchildren. The employees' tax is a $10 tax levied on each employee working in the district; the model determines the amount of employee tax revenue that would have been attributable to alternative use employees by multiplying the number of alternative use-attributable employees and their working spouses by $10. The real estate tax is a tax on the transfer of real estate; the model treats these revenues as a function of property tax revenue. The model assumes that alternative use employees would have been as likely to buy and sell real estate as would other employees, and estimates the amount of alternative use-attributable real estate tax revenue by multiplying the total real estate tax revenue by the percentage of current property tax revenue that would have been attributable to alternative use.

ABBREVIATIONS

ADA = Average Daily Attendance

BEA = Bureau of Economic Analysis, Department of Commerce

BLS = Bureau of Labor Statistics, Department of Labor

LEA = Local Educational Agency

NAF = Non-Appropriated Funds

NEA = National Education Association

SAFA = Division of School Assistance for Federally Affected Areas, Department of Education

SMSA = Standard Metropolitan Statistical Area

W&S = Wages and Salaries

DEFINITIONS

1) Base-Attributable = Base-connected + Base-induced.

2) Base-Connected = Schoolchildren, income, expenditures, and revenues associated with employees who work directly for the base.

3) Base-Induced = Schoolchildren, income, expenditures, and revenues associated with employees in the commercial sector who were hired to accommodate the spending of base employees.

4) Consumption = Includes purchase of retail sales and taxable services as defined by U.S. Bureau of the Census.

5) Net Multiplier = Induced portion of the earnings multiplier.

6) "3(b)(1) parents" = Civilian employees who live but do not work on base.

Summary of Results for Sample District

(Numbers Rounded for Illustrative Purposes)

Expenditures (Millions $)

Base-Attributable	Alternate Use
$7.4	$1.9

Revenues
(Millions $)

Property Tax Revenue	$1.5	$1.3
State Aid	2.3	.5
Other Local Revenue	.6	.2
	$4.4	$2.0

Burden

Burden = (Current Expenditures - Current Revenues)
- (Alternative Use Expenditures - Alternative Use Revenue)

= ($7.4 - $4.4)
- ($1.9 - $2.0)

= $3.1m

I. Current Expenditures

VARIABLE	OPERATION	SAMPLE	SOURCE
Base-induced personal income, district[1]		$14,700,000	Sections IIA, IIB
Personal income per job[2]	÷	$15,000	BEA
Induced jobs[3]	=	980	
(ADA/Job)[4]	x	0.4	BEA, LEA
ADA, base-induced	=	392	
ADA, base-connected	+	3,330	SAFA
ADA, base-generated	=	3,722	
Per-pupil expenditure[5]	x	$2,000	SAFA, State Ed. Dept.
Expenditures, base-attributable	=	$7,440,000	

II. Current Revenues

A. Residential Property Tax Revenue

(Includes civilian and military employees and their working spouses living in taxable residences in the school district.)

VARIABLE	OPERATION	SAMPLE	SOURCE
Civilian Employees			
No. civil service employees		600	BASE
Avg. W&S, civil service employees	x	$20,000	BASE
Personal income adjustment[6]	x	1.25	BEA
a) Direct personal income	=	$15,000,000	
Net multiplier[7]	x	0.5	BEA
1) Induced personal income from civil service employees	=	$7,500,000	
No. NAF employees		200	BASE
Avg. W&S, NAF employees	x	$8,000	BASE
Personal income adjustment	x	1.25	BEA
b) Direct personal income	=	$2,000,000	
Net multiplier	x	0.5	BEA
2) Induced personal income from NAF employees	=	$1,000,000	
No. contractors[8]		400	BEA
Avg. W&S, job[9]	x	$12,000	BEA
Personal income adjustment	x	1.25	BEA
c) Direct personal income	=	$6,000,000	
Net multiplier	x	0.5	BEA
3) Induced personal income from contractors	=	$3,000,000	
No. working spouses[10]		200	BASE, BLS
Avg. W&S, job	x	$12,000	BEA
Personal income adjustment	x	1.25	BEA
d) Direct personal income	=	$3,000,000	
Net multiplier	x	0.5	BEA
4) Induced personal income from working spouses	=	$1,500,000	
Military Employees			
No. off-base military		2,500	BASE
Avg. W&S, off-base military	x	$16,000	BASE
Personal income adjustment	x	1.25	BEA
e) Direct personal income	=	$50,000,000	
Net multiplier	x	0.5	BEA
5) Induced personal income from off-base military	=	$25,000,000	

VARIABLE	OPERATION	SAMPLE	SOURCE
Military Employees (cont.)			
No. working spouses[11]		800	BASE, BLS
Avg. W&S, job	x	$12,000	BASE
Personal income adjustment	x	1.25	BEA
f) Direct personal income	=	$12,000,000	
Net multiplier	x	0.5	BEA
6) Induced personal income from working spouses	=	$6,000,000	
Civilian and Military Employees			
Induced personal income from residents of district (1+2+3+4+5+6)		$44,000,000	
Induced personal income from employees living outside of district in county or SMSA (Section B)	+	$103,000,000	
Induced personal income, Total	=	$147,000,000	
2) Percentage induced income accruing to district residents[12]	x	0.10	Census
Induced personal income, district	=	$14,700,000	
Direct personal income, district (a+b+c+d+e+f)	+	$88,000,000	
Personal income of taxable residents, base-attributable	=	$102,700,000	
Personal income of taxable residents, district[13]	÷	$1,000,000,000	BEA, LEA
Percentage of personal income, district, base-attributable	=	0.103	
Residential property tax revenue, district	x	$10,000,000	Local Tax Assessor
Residential property tax revenue, base-attributable	=	$1,030,000	

B. Commercial Property Tax Revenue (CPTR)

(Includes civilian and military employees and their working spouses living on-base and throughout the county or SMSA.)

VARIABLE	OPERATION	SAMPLE	SOURCE
Civilian Employees			
No. civil service employees		50	BASE
Avg. W&S, civil service on-base	x	$12,000	BASE
Personal income adjustment	x	1.25	BEA
a) Direct personal income	=	$750,000	
Net multiplier	x	0.5	BEA
1) Induced personal income from civil service employees	=	$375,000	
No. 3(b)(1) parents		50	LEA
Avg. W&S, job	x	$12,000	BEA
Personal income adjustment	x	1.25	BEA
b) Direct personal income	=	$750,000	
Net multiplier	x	0 .5	BEA
2) Induced personal income from 3(b)(1) parents	=	$375,000	
No. civilians, county or SMSA (excluding district)		2000	BASE
Avg. W&S, civilians, county or SMSA (excluding district)	x	$24,000	BASE
Personal income adjustment	x	1.25	BEA
C) Direct personal income	=	$60,000,000	
Net multiplier	x	0.5	BEA
3) Induced personal income from civilians, county or SMSA (excluding district)	=	$30,000,000	
No. working spouses		400	BASE, BLS
Avg. W&S, job	x	$12,000	BEA
Personal income adjustment	x	1.25	BEA
d) Direct personal income	=	$6,000,000	
Net multiplier	x	0.5	BEA
4) Induced personal income from working spouses	=	$3,000,000	
Military Employees			
No. of military, on-base		2,000	BASE
Avg. W&S, military, on-base	x	$12,000	BASE
Personal income adjustment	x	1.25	BEA
e) Direct personal income	=	$30,000,000	
Net multiplier	x	0.5	BEA
5) Induced personal income from military, on-base	=	$15,000,000	

VARIABLE	OPERATION	SAMPLE	SOURCE
Military Employees (cont.)			
No. military in tax-exempt mobile homes		200	BASE, Tax Assesors
Avg. W&S, military	x	$14,000	BASE
Personal income adjustment	x	1.25	BEA
f) Direct personal income	=	$3,500,000	
Net multiplier	x	0.5	BEA
6) Induced personal income from military in tax-exempt mobile homes	=	$1,750,000	
No. military, county or SMSA (excluding district)		4,000	BASE
Avg. W&S military, county or SMSA (excluding district)	x	$15,000	BASE
Personal income adjustment	x	1.25	BEA
g) Direct personal income	=	$75,000,000	
Net multiplier	x	0.5	BEA
7) Induced personal income	=	$37,500,000	
No. working spouses		2,000	
Avg. W&S, job	x	$12,000	BEA
Personal income adjustment	x	1.25	BEA
h) Direct personal income	=	$30,000,000	
Net multiplier	x	0.5	BEA
8) Induced personal income from working spouses	=	$15,000,000	
Total direct personal income, employees living in county or SMSA (excluding district) (a+b+c+d+e+f+g)		$206,000,000	
Total induced personal income, employees living in county or SMSA (excluding district) (1+2+3+4+5+6+7)	+	$103,000,000	
Total direct and induced personal income, employees in taxable residences, district (Section A)	+	$132,000,000	
Total personal income, base-attributable, county or SMSA	=	$441,000,000	
Percentage of personal income spent on retail goods and taxable services[14]	x	0.6	Census Natl. Avg.

VARIABLE	OPERATION	SAMPLE	SOURCE
On-base purchases, military residents, county or SMSA[15]	-	$44,600,000	Base
Total consumption, off-base	=	$220,000,000	
Percentage of purchases of retail sales and taxable services, district[16]	x	0.5	Census
Consumption of base employees, district	=	$110,000,000	
Total consumption, district[17]	÷	$880,000,000	Census
Percentage of consumption in district, base-attributable	=	0.13	
Commercial property tax[18] revenue, district	x	$ 4,000,000	Local Tax Assessor
Commercial property tax revenue, base attributable	=	$ 520,000	

C. General Fund State Aid

Base-attributable portion obtained by inserting into formula ADA and assessed valuation attributable to the base. For the sample calculations it is assumed that State aid depends only on ADA.

VARIABLE	OPERATION	SAMPLE	SOURCE
Base-attributable ADA		3,722	
State aid per pupil	x	$ 600	State Ed. Dept.
a) Non-categorical State aid, base-attributable	=	$2,230,000	
ADA, Base-attributable		3,722	
Total ADA	÷	40,000	SAFA
Percentage of ADA, base-attributable	=	0.09	
Categorical and other State aid	x	$1,000,000	LEA
b) Categorical and other State aid, base-attributable	=	$ 90,000	
Total general fund State aid (a + b)	=	$2,320,000	

D. Miscellaneous Other Local Revenues

(Includes other local revenues and categorical State aid.)

VARIABLE	OPERATION	SAMPLE	SOURCE
If function of ADA:			
ADA, base-attributable		3,722	
Total ADA	÷	40,000	SAFA
Percentage of ADA, base-attributable	=	0.09	
Total miscellaneous revenue	x	$2,000,000	LEA
a) Miscellaneous revenues, base-attributable	=	$ 180,000	
If revenue function of revenue collected:			
Percent of residential property tax revenue, commercial property tax revenue, and general fund State aid, base-attributable		0.024	Sections IIA, IIB, IIC
Interest income	x	$1,000,000	LEA
b) Interest income, base-attributable	=	$ 24,000	
If revenue function of personal income:			
Percent of taxable district personal income, base-attributable		0.41	LEA
Local income tax revenue	x	$1,000,000	
c) Income tax revenue, base-attributable	=	$ 410,000	
Total miscellaneous "other" revenue (a+b+c)		$ 614,000	

Alternative Use of the Base Site

III. Alternative Use Expenditures

VARIABLE	OPERATION	SAMPLE	SOURCE
Induced personal income, district		$2,000,000	Sections IVB, IVC
Personal income per job	÷	$ 15,000	BEA
Induced jobs	=	133	
Site-connected employees, district	+	1,588	Sections IVB, IVC
Working spouses site-connected[19]	+	600	BLS
Site-attributable jobs, district	=	2,321	
ADA/Job	x	0.4	Section I
ADA, site-attributable	=	928	
Per-pupil expenditure	x	$ 2,000	SAFA, State Ed. Depts.
Expenditures, site-attributable	=	$1,856,000	

IV. Alternative Use Revenues

A. Site-Generated Property Tax Revenue from Agricultural, Commercial, and Industrial Land

(Figures assume site divided equally among agricultural, commercial, and industrial uses.)

VARIABLE	OPERATION	SAMPLE	SOURCE
No. acres, agricultural		700	Local Planners, Historians
Average tax per acre[20]	x	$ 1.00	Local Assessor
a) Total property tax revenue, agricultural	=	$ 700	
No. acres, commercial		700	Local Planners
Percent of land developed	x	0.5	County Planning Documents
Average tax per acre[21]	x	$ 1,000	Local Assessor
b) Total property tax revenue commercial	=	$ 350,000 +	

VARIABLE	OPERATION	SAMPLE	SOURCE
No. acres, industrial		700	Local Planners
Percent of land developed	x	0.5	County Planning Documents
Avg. tax per acre	x	$ 2,000	Local Assessor
c) Total property tax revenue industrial	=	$ 700,000	
Total property tax revenue, site (a+b+c)		$1,051,000	

B. Residential Property Tax Revenue[22]

VARIABLE	OPERATION	SAMPLE	SOURCE
No. acres, agricultural		700	Local Planners
Farm proprietors per agricultural acre	x	0.014	BEA
Total farm proprietors	=	10	
Avg. W&S, farm proprietors	x	$ 8,000	BEA
Personal income adjustment	x	1.25	BEA
a) Direct personal income	=	$ 100,000	
Net multiplier	x	0.5	BEA
1) Induced personal income from farm proprietors	=	$ 50,000	
No. acres, agricultural		700	Local Planners
Farm employees per agricultural acre	x	0.014	Local Planning Documents
Total farm employees	=	10	
Percent living in district[23]	x	0.3	
Farm employees, district	=	3	
Avg. W&S, farm employees	x	$ 6,000	BEA
Personal income adjustment	x	1.25	BEA
b) Direct personal income	=	$ 22,500	
Net multiplier	x	0.5	BEA
2) Induced personal income from farm employees	=	$ 11,250	
No. developed acres, commercial		350	Local Planners, BEA, Census
Commercial employees per commercial acre	x	10	Local Planning Documents
Total commercial employees	=	3,500	
Percent living in district	x	0.3	
Commercial employees, district	=	1,050	

VARIABLE	OPERATION	SAMPLE	SOURCE
Avg. W&S, commercial employees	x	$ 6,400	BEA, Census, Fla. Dept. of Unemployment
Personal income adjustment	x	1.25	BEA
c) Direct personal income	=	$ 8,400,000	
Net multiplier	x	0.5	BEA
3) Induced personal income from commercial employees	=	$ 4,200,000	
No. developed acres, industrial		350	Local Planning Documents
Industrial employees per industrial acre	x	5	Local Planners
Total industrial employees	=	1,750	
Percent living in district	x	0.3	
Industrial employees, district	=	525	
Avg. W&S, industrial employees	x	$ 12,800	BEA, State Labor Dept.
Personal income adjustment	x	1.25	BEA
d) Direct personal income	=	$ 8,400,000	
Net multiplier	x	0.5	BEA
4) Induced personal income from industrial employees	=	$ 4,200,000	
No. working spouses		300	BLS
Avg. W&S, job	x	$ 12,000	BEA
Personal income adjustment	x	1.25	BEA
e) Direct personal income	=	$ 4,500,000	
Net multiplier	x	0.5	BEA
5) Induced personal income from working spouses	=	$ 2,250,000	
Induced personal income, district (1+2+3+4+5)		$11,000,000	
Induced personal income from employees in county or SMSA (excluding district) (Section C)	+	$30,000,000	
Total induced personal income	=	$41,000,000	
Percentage induced personal income accruing to district residents[24]	x	0.05	
Induced personal income, district	=	$ 2,000,000	

VARIABLE	OPERATION	SAMPLE	SOURCE
Direct personal income, district (a+b+c+d+e)	+	$21,000,000	
Personal income, taxable residents of district, site-attributable	=	$23,000,000	
Personal income, taxable residents, district	÷	$1,000,000,000	Section IIA
Percentage of personal income, district, site-attributable	=	0.023	
Residential property tax revenue, district	x	$10,000,000	Local Tax Assessor
Residential property tax revenue, site-attributable	=	$ 230,000	

C. Commercial Property Tax Revenue[25]

(Derived from spending by site-attributable employees in county or SMSA.)

VARIABLE	OPERATION	SAMPLE	SOURCE
No. farm employees, county or SMSA (excluding district)[26]		7	
Avg. W&S, farm employees	x	$ 6,000	BEA
Personal income adjustment	x	1.25	BEA
a) Direct personal income	=	$ 52,500	
Net multiplier	x	0.5	BEA
1) Induced personal income from farm employees	=	$ 26,250	
No. commercial employees, county or SMSA (excluding district)		2450	
Avg. W&S, commercial employees	x	$ 8,000	BEA, Census
Personal income adjustment	x	1.25	BEA
b) Direct personal income	=	$ 24,500,000	
Net multiplier	x	0.5	BEA
2) Induced personal income from commercial employees	=	$ 12,250,000	

VARIABLE	OPERATION	SAMPLE	SOURCE
No. industrial employees, county or SMSA (excluding district)		1225	
Avg. W&S, industrial employees	x	$ 16,000	BEA, State Labor Dept.
Personal income adjustment	x	1.25	BEA
c) Direct personal income	=	$ 24,500,000	
Net multiplier	x	0.5	BEA
3) Induced personal income from industrial employees	=	$ 12,250,000	
No. working spouses		700	BLS
Avg. W&S, job	x	$ 12,000	BEA
Personal income adjustment	x	1.25	BEA
d) Direct personal income	=	$ 10,500,000	
Net multiplier	x	0.5	BEA
4) Induced personal income from working spouses	=	$ 5,250,000	
Direct personal income, site employees, county or SMSA (excluding district) (a+b+c+d)		$ 60,000,000	
Induced personal income, site employees, county or SMSA (excluding district) (1+2+3+4)	+	$ 30,000,000	
Direct and induced personal income, employees in taxable residences, district	+	$ 32,000,000	Section IVB
Total personal income, site-attributable	=	$122,000,000	
Percentage of personal income spent on retail goods and taxable services	x	0.6	Census Natl. Avg.
Percentage of purchases of retail goods and taxable services spent in district[27]	x	0.25	
Consumption, district, site-attributable	=	$ 18,000,000	
Total consumption, district	÷	$880,000,000	Census
Percentage consumption, site-attributable	=	0.02	
Commercial property tax revenue, district	x	$ 4,000,000	Local Tax Assessor
Commercial property tax revenue, site-attributable	=	$ 80,000	

D. General Fund State Aid

VARIABLE	OPERATION	SAMPLE	SOURCE
ADA site-attributable		928	
Non-categorical State aid per pupil	x	$ 600	State Ed. Dept.
a) Non-categorical State aid, site-attributable	=	$ 557,000	
ADA, site-attributable		928	
Total ADA	÷	40,000	LEA
Percentage of ADA, site-attributable	=	0.02	
Categorical State aid	x	$ 1,000,000	LEA
b) Categorical State aid, site-attributable	=	$ 20,000	
Total general fund State aid (a+b)	=	$ 577,000	

E. Miscellaneous "Other" Local Revenue

VARIABLE	OPERATION	SAMPLE	SOURCE
If function of ADA:			
ADA, site-attributable		928	
Total ADA	÷	40,000	LEA
Percentage of ADA, site-attributable	=	0.02	
Miscellaneous other local revenue, district	x	$ 3,000,000	LEA
a) Miscellaneous revenues, site-attributable	=	$ 60,000	
If function of revenues collected:			
Percent of residential property tax revenue, commercial property tax revenue, and general fund State aid, site-attributable		0.012	Sections IVB, IVC, IVD
Interest income, site-attributable	x	$ 1,000,000	LEA
b) Interest income, site-attributable	=	$ 12,000	
If function of personal income:			
Percentage of taxable personal income, site-attributable		0.09	
Revenue, local income tax	x	$ 1,000,000	LEA
c) Income tax revenue, site-attributable	=	$ 90,000	
Total miscellaneous "other" local revenue, site-attributable (a+b+c)	=	$ 162,000	

FOOTNOTES TO THE ECONOMIC IMPACT MODEL

1/ The income of induced employees residing in the district.

2/ $$\frac{\text{(Total W\&S, County or SMSA + Total Proprietors' Income, County or SMSA)}}{\text{No. jobs, County or SMSA}} \times \text{Personal income adjustment}$$

BEA Personal Income data by county or SMSA was available only for 1978. All personal income figures throughout the model were updated to 1979 by applying the State-wide rate of increase in per capita income from 1978 to 1979.

3/ The number of induced jobs, rather than the number of induced employees, was calculated because data on the number of jobs were available for the county and SMSA, whereas data on the number of employees were not. Since the multiplier effect is assumed to occur within a county or SMSA (depending on the area), the Commission felt it important to use data that were reliable at that local level. Though the number of induced jobs exceeds the number of induced employees (some employees hold more than one job), the model's estimate of induced ADA is not likely to be biased. The bias in the jobs variable is neutralized when the number of jobs is multiplied by the ADA per job ratio. The model's estimate of the number of induced ADA, therefore, is not affected by the use of data on jobs rather than employees.

4/ This figure was determined differently for each case because of the differences in the availability of data:

Douglas School District:
  (Total ADA, Pennington and Meade Counties
    - on-base Ellsworth military ADA)

  (Total Jobs, Pennington and Meade Counties
    - Ellsworth military employees living on base)

Bellevue School District and Chambersburg Area School District:
    (ADA/Population, School District)
  x (Population/Jobs, County or SMSA)

Escambia County School District:
  (Total ADA - military connected ADA, Escambia County)
  (Total jobs- military jobs, Escambia County)

5/ The Commission model uses both the State average of per-pupil expenditures and the weighted average of per-pupil expenditures for the comparable school districts. The need for consistent, uniform data prompted the Commission to use statistics compiled at the Federal level. This meant that SAFA data on State per-pupil expenditures had to be updated and that States' data on comparable districts' per-pupil expenditures had to be standardized by applying Federal data. In addition, Federal revenues (which are taken into account by SAFA and the State education departments in determining per-pupil expenditures) had to be subtracted from both figures because the model does not consider Federal contributions to the revenue of the local educational agency.

To determine the State average per-pupil expenditure, SAFA data from FY 1978--the most recent year for which data was availale at the Federal level--had to be updated to FY 1979. This was done by using data from the State education departments to determine the rate of increase in per-pupil expenditures from FY 1978 to FY 1979; this rate of increase was then applied to the SAFA data from FY 1978 to obtain figures for FY 1979.

To determine the weighted average of per-pupil expenditures in the comparable districts, the model had to standardize State data for the comparable districts because each State defines current expenditures differently. SAFA data on State average per-pupil expenditures was compared to similar State data, and the result applied to State data on comparable districts, in the following way:

$$\frac{\text{State average per-pupil expenditures, SAFA, FY 1979}}{\text{State average per-pupil expenditures, States, FY 1979}}$$

$$\times \text{ Weighted average of per-pupil expenditures, comparable districts, State, FY 1979}$$

The above operation, applied to each State's data on per-pupil expenditures, yielded a standardized estimate of per-pupil expenditures for the comparable districts.

The results of the operation discussed above are per-pupil expenditure figures for the State and for comparable districts that include contributions from Federal, State, and local sources. Because the model considers only non-Federal revenues, the Federal component of per-pupil expenditures had to be subtracted. This was done by computing the percentage of State average per-pupil expenditures (as determined by SAFA) that derived from Federal revenue in FY 1978. This percentage was then subtracted from the per-pupil expenditure figures calculated above for FY 1979 to yield per-pupil expenditures from non-Federal sources.

The comparable districts used to determine the per-pupil expenditure figure were approved, in two cases, by the U.S. Department of Education and in the two other cases, by the State departments of education. Because the local contribution rates for Bellevue and Douglas under Public Law 874 were determined on the basis of comparable districts, the U.S. Department of Education was required by regulation to approve the choice of these districts according to extensive criteria such as the number of students, the assessed valuation of district property, and the mill rate in the district.

The Commission model relied on data from these districts in estimating per-pupil expenditure figures for Bellevue and Douglas.

For Escambia County, the Commission relied on the classification scheme used in the annual report of the Florida Department of Education. The Department divided Florida's districts into five groups on the basis of five criteria: population size, average family income, percent urban, median education, and number of white-collar workers. The Commission then selected the non-federally-impacted districts from Escambia County's group as the comparable districts for the case study.

For Chambersburg, the Commission requested the Pennsylvania Department of Education to select five comparable districts on the basis of U.S. Department of Education criteria.

The comparable districts used by the Commission model to estimate the per-pupil expenditure for the districts studied were the following:

Bellevue: Auburn, Beatrice, Fairbury, Geneva, and Seward.

Chambersburg: Harrisburg City, Mifflin County, Warren County,
Wilkes-Barre, and Williamsport Area School District.

Douglas: Brookings, Huron, Lake Central, Miller, and Vermillion.

Escambia County: Charlotte, Collier, Indian, and Polk.

6/ The personal income adjustment is the ratio of Federal employees' total personal income to their wages and salaries. Total personal income consists of the sum of non-wage income and wages and salaries, minus social security tax payments. Non-wage income includes other labor income (primarily contributions made by employers to private pensions, health, and welfare funds), and dividends, interest, and rent received.

The data that were used--statistics on wages and salaries (W&S), other labor income (OLY), dividends, interest and rent (DIR), and Social Security taxes (SST)--are available for county employees, but not specifically for Federal employees. The only data available from BEA for Federal employees consists of W&S and OLY combined into one figure. To make the calculations necessary to determine a personal income adjustment for Federal employees, the model assumes that the constituents of total personal income listed above are the same--and of the same proportions--for Federal employees as for employees throughout the county.

Federal W&S is determined by multiplying the sum of Federal W&S and OLY by the ratio of county W&S to county W&S and OLY. Federal OLY is then the difference between the sum of Federal W&S and OLY, and

Federal W&S. Federal DIR is estimated by multiplying the county DIR by the proportion of county W&S, OLY, and proprietors' income that is comprised by Federal W&S and OLY (DIR is assumed to be a function of W&S and OLY). Federal SST is estimated by multiplying county SST by the proportion of county W&S and proprietors' income composed of Federal W&S (SST is assumed to be a function of W&S). [(Total Proprietors' Income (Prop. Y) is used in the determination of Federal DIR and SST because Proprietors' DIR and SST are part of the county figures and should not be attributed to wage and salary employees.]

The results are estimates of the components of total personal income for Federal employees. The three kinds of income are then added together, social security taxes subtracted, and the result divided by W&S to yield the personal income adjustment for Federal employees. The personal income adjustment for Non-Appropriated Fund employees is less, however, because it is calculated without consideration of OLY, since Non-Appropriated Fund benefits are minimal.

Personal Income Adjustment:			Sample (Millions)
	Wages & Salaries, total, county		$400
	Other Labor Income, total, county + W&S, county	÷	440
	W&S + OLY, Federal	x	110
a)	W&S, Federal	=	100
	W&S + OLY, Federal		110
	W&S Federal	-	100
b)	Other Labor Income, Federal	=	10
	W&S + OLY, Federal		110
	W&S + OLY, county + Proprietor's Income	÷	500
	Dividends, Interest, & Rent, county	x	90
c)	DIR, Federal	=	20
	W&S, Federal		100
	W&S, county + Prop. Y, county	÷	470
	Social Security Taxes, county	x	23
d)	SST, Federal	=	5

a		100
b	+	10
c	+	20
d	-	5
Personal Income	=	125
Wages & Salaries		100
Personal Income Adjustment	=	1.25

7/ The multipliers for three of the four case studies were obtained from the Bureau of Economic Analysis. For the studies of Bellevue, Chambersburg, and Escambia County, the Commission relied on BEA findings of the range of multipliers that could conceivably apply to military employees, civilian employees, Non-Appropriated Fund employees, and spouses of these employees. BEA determines these multipliers from input-output models it has designed in studies for the Department of Defense.

The Commission did not use BEA data on multipliers in its study of Douglas because BEA had not conducted any studies of areas with commercial sectors as small as Douglas'. The Commission determined the multipliers for Douglas by applying the Keynesian formula that provides the conceptual basis for more intensive, complex approaches to estimating multipliers. This formula underlies multiplier theory and is applicable--assuming the availability of data--to all regions.

The multiplier effect from introducing income into a region increases as the percentage of income that is spent in the region increases. That is, the higher the proportion of income that is spent locally, the larger the multiplier:

Multiplier = 1/1 - marginal propensity to consume locally

In more self-sufficient urban economies, a relatively high proportion of income is likely to be spent locally by both consumers and by businesses making intermediate purchases. In rural economies such as Douglas', consumers and businesses are likely to spend a relatively small percentage of their income in the local economy. Multipliers, as a rule, are higher in urban areas than in rural areas.

In Douglas School District, where there are only 24 commercial establishments, averaging an estimated $194,790 in annual sales, very few of the receipts from consumer purchases are re-spent in Douglas by the commercial establishments. Virtually all the stores are small retail establishments or commercial offices that make their intermediate or wholesale purchases either in Rapid City (population: 52,070), which is 10 miles away, or outside the area.

The only local consumption in Douglas, therefore, is done by consumers, not by businesses. Using the Keynesian formula to estimate the multipliers for Douglas requires simply a determination of consumers' total income and the amount that they spend within the district.

The Commission estimated the amount that military employees spent in Douglas by multiplying the total sales in Douglas by the proportion of purchases in the local economy that were made by military employees. The percentage of local consumption by military employees was determined by first estimating the total consumption of both military families and all families living in the district, using national data on the percentage of income spent on consumption. (Total Personal Income x Consumption, U.S/Income, U.S.). On-base purchases attributable to these military families was then subtracted from total military consumption. The result was the ratio of off-base military purchases to purchases by all district residents. This figure was then multiplied by total sales in Douglas, which was estimated from U.S. Census data (see note 17, infra).

The complete procedure for estimating the military multiplier was as follows:

Multiplier = 1/1 - marginal propensity to consume locally (MCPL)

MCPL = Consumption in local economy/Personal income

Consumption in Local Economy = Retail sales and taxable services, Douglas x (Military consumption, Douglas/ Total consumption, Douglas)

Military Consumption, Douglas = Total personal income, military on base and in district x Consumption, U.S./Income, U.S. - On-base sales attributable to military on base and in district

The multiplier for civilian employees was determined in similar fashion, except that no base sales were attributable to civilian employees. The proportion of local consumption done by civilian employees was therefore higher than that done by military employees, resulting in a higher marginal propensity to consume locally and, ultimately, a higher multiplier.

8/ Of the four bases studied, only Pensacola Naval Air Station had firm data on the number of contractors working on base. For the other three bases, the number of contractors was estimated from other data. The most important variable is base-connected ADA, a statistic collected by SAFA that includes the number of children whose parents are contractors working on base. The number of jobs on base (including contractors) and the number of working spouses associated with employees at these jobs is determined with the jobs/ADA ratio (discussed in note 4, supra). To isolate the number of contractors from this group, the number of non-contractor civilian employees, their working spouses, and the working spouses of the contractors are subtracted. The following operation illustrates this procedure:

Base-connected ADA, civilian
x (jobs/ADA)
= Base-connected jobs + working spouses
- Base-connected Civil Service & NAF employees + their working spouses
= Contractors + their working spouses
- Working spouses
= Contractors

9/ $\dfrac{\text{Total W\&S, County or SMSA}}{\text{No. jobs, county or SMSA (excluding proprietors)}}$

10/ For civilian employees the model assumes that working couples choose where to locate on the basis of the husband's place of employment. The personal income of the non-base-attributable working spouses of the female civilian employees, therefore, is not included in the calculations because the model assumes that the couple would have located where they did whether or not the base had been established.

The number of working wives of base employees was estimated from data on the number of male employees on base, the percentage of males that are married (either on base or in the State, depending on what data was available), and the percentage of wives in the State who work. The following operation shows the procedure used (sources of the data are in parentheses):

Number of male employees, base (Base)
x Percent of males married (Base or BLS)
x Percent of wives who work (BLS)
= Number of working wives of base employees

11/ Both male and female working spouses of military employees are included in the model because the locational decisions for these families are made by the Federal Government. The operation for calculating the number of working spouses of military employees adds a determination of the number of working husbands to the procedure used in note 10, *supra*, to determine the number of working wives. That additional procedure, like the one shown in note 10, relies on data on the number of female military employees, the percentage of females that are married (either on base or in the State, depending on what data was available), and the percentage of husbands in the State who work. It is shown below (sources of data are in parentheses):

Number of female military employees, base (Base)
x Percent female married, base (Base or BLS)
x Percent of husbands who work (BLS)
= Number of working husbands

When base information has been available on the number of married couples working at the base, the number of working spouses has been adjusted downward. Ellsworth Air Force Base in Douglas School District and Pensacola Naval Air Station in Escambia County School District provided these data. Since the number of such couples is relatively small (less than three percent of base employees at either base are married to other base employees), there appears to be little bias in the results for bases without data.

12/ For all districts except Douglas, the model assumed that induced employees were as likely as other employees in the area to reside in the district. That is:

$$\text{No. induced employees, living in district} = \frac{\text{population, district}}{\text{population, County or SMSA}}$$

In Douglas School District, the model assumed that induced employees were as likely as civilian base employees to reside in the district. This assumption was made because of the extremely rural nature of Douglas, where it was unlikely that any commercial employees working outside the district would live in the district. The operation to determine the number of induced employees living in Douglas was as follows:

$$\text{No. induced employees, living in district} = \frac{\text{Civil service employees, district}}{\text{Civil service employees, base}} \times \text{Total Induced Employees}$$

The model also assumed that the number of school-age children per family was the same in the district as throughout the county or SMSA. This made it possible to estimate the population of the district:

$$\text{Population, living in district} \quad \frac{\text{Enrollment, district}}{\text{Enrollment, County or SMSA}} \times \text{Population, County or SMSA}$$

In Douglas, this procedure was applied only to off-base population because data for on-base population was provided by the base.

Since Escambia County School District is coterminous with the county, exact population figures were available.

The years for which data were available varied with the district. In Chambersburg, enrollment data for 1975-76 were used. In Bellevue, data for 1977-78 were used. In Douglas School District, data for 1978-79 were used. It is unlikely that the ratio of enrollment in the district to enrollment in the area would vary significantly from 1975 to 1979. The latest year for which population data for the county or SMSA were available was 1978.

13/ Though the procedure for determining the taxable personal income of each district was basically the same, this procedure was modified in each case study because of the differences in the availability of data:

Bellevue School District
Population, district
- Base-connected ADA x (Pop./ADA), district
x Per capita personal income, SMSA
= Personal income, non-base-connected taxable residents, district
+ Personal income, taxable base-connected residents, district
= Personal income, taxable residents, district

Chambersburg School District

Population, district
- Base-connected ADA x (pop./ADA), district
- Low-rent housing ADA x (pop./ADA), district
x Per capita personal income, county
= Personal income, non-base-connected taxable residents, district
+ Personal income, taxable base-connected residents, district
= Personal income, taxable residents, district

Douglas School District

Non-base-connected ADA, district
x (Pop./ADA), district
x Per capita personal income, county
= Personal income, non-base-connected taxable residents, district
+ Personal income, taxable base-connected residents, district
= Personal income, taxable residents, district

Escambia County School District

Personal income, county
- Personal income, non-taxable residents
= Personal income, taxable residents, district

14/ The model uses the ratio of sales-to-income to determine the consumption-to-income ratio. It applies national data on sales and income rather than local data in order to reduce the bias in these estimates. Local data on commercial sales depend on the degree of commercial concentration in the area and is not always likely to reflect the consumption of just the residents. In areas of greater commercial concentration, the ratio of sales to income is probably higher than the true consumption-to-income ratio for the residents in the area; conversely, in areas of less commercial concentration this method would yield a consumption-to-income ratio that is probably lower than the true ratio. In Escambia County, for example, an area of high concentration, the proportion of retail sales and taxable service receipts to personal income is 72 percent--13 percentage points above the national average of 59 percent. In neighboring Santa Rosa County, however, it is 44 percent--15 percentage points below the national average. It is unlikely that residents of Escambia County spend 72 percent of their income on retail goods and taxable services while residents of adjacent Santa Rosa County spend only 44 percent.

15/ Method used to determine on-base purchases of county or SMSA residents varied with the nature of the area in which the base was located and with the availability of data. The general approach was to multiply total on-base sales by the percentage of military and military retiree income in the area that was made up by the income of military residents of the county or SMSA.

In Bellevue, the purchases of military employees throughout the SMSA were considered because the model assumed that all shopping of SMSA residents took place within the SMSA.

In Chambersburg, Letterkenny Army Depot has no commercial establishments, but military employees from Letterkenny can shop at Carlisle Barracks, in nearby Carlisle.

In Douglas, the model assumed that the only customers at stores in Douglas would be residents of the district or families living on base.

In Escambia County, military employees throughout the county (but not the SMSA) were considered because of information from Eglin Air Force Base showing that military residents of Santa Rosa County (which is part of the Pensacola SMSA) were more likely to shop at Eglin than at Pensacola Naval Air Station.

Bellevue School District:

$$\frac{\text{Military payroll, SMSA}}{\text{Military payroll, total} + \text{retirees' income (SMSA)}} \times \text{Total on base sales}$$

Chambersburg School District:

An informal survey by base staff revealed that military employees do 30 percent of their consumption at commercial establishments on Carlisle Barracks in a neighboring county.

Douglas School District:

$$\frac{\text{Military payroll, on-base and district}}{\text{Military payroll, total}} \times \text{Total on-base sales}$$

Escambia School District:

$$\frac{\text{Military payroll, County}}{\text{Military payroll, total} + \text{retirees' income, County}} \times \text{Total on-base sales}$$

16/ For all districts except Douglas, the model assumed that residents of the county or SMSA did all their shopping throughout the county or SMSA, respectively, and that these same residents were the exclusive patrons of commercial establishments in the district. The model determined the percentage of these residents' purchases that were made within the district by dividing the amount of total sales in the district by the amount of sales in the county or SMSA. That is:

$$\frac{\text{Retail Sales and Taxable Services, district}}{\text{Retail Sales and Taxable Services, county or SMSA}}$$

Data on retail sales and taxable services is available from the Census Bureau for counties, SMSAs, and cities with populations of 2,500 or over. In Douglas, however, the only town--Box Elder--had a population of just 865 in 1978. The amount of retail sales and taxable services for Box Elder (the figure in the numerator above) had to be estimated from other Census data.

Pennington County, in which Box Elder is located, is a rural area with one major town, Rapid City, which has a population of 52,070. The commercial establishments in the county outside of Rapid City are similar in size to the establishments in Box Elder. To estimate the amount of sales in Box Elder, the Commission first determined the average sales per establishment in Pennington County, outside Rapid City. The Commission then multiplied the number of establishments in Box Elder (a figure obtained from school district officials) by the average amount of sales per establishment in the county outside Rapid City to obtain total sales in Box Elder.

The total purchases made by those who shop in the district (reflected in the denominator in the ratio above) also had to be treated differently for Douglas. The model assumes that the only purchases in Box Elder are made by residents of the district because of the extremely rural nature of the area. The denominator, therefore, should reflect only district residents' total purchases of retail goods and taxable services, rather than purchases by residents of the county or SMSA.

17/ Retail sales and taxable services data for 1977 was updated to 1979 by applying the percentage change in personal income for the county or SMSA from 1977 to 78 and the percentage change in personal income for the State from 1978 to 79.

18/ Includes property taxes on utilities.

19/ The method is the same as that used to determine the number of working spouses connected with the base (*see* note 10, *supra*). All data is from BLS.

20/ Does not include tax on residential structures. In Chambersburg, the amount of agricultural tax revenue per acre was estimated by local planners. In Douglas and Escambia County, the tax was based on the total agricultural tax revenue divided by total number of agricultural acres.

21/ In Bellevue, commercial and industrial tax revenue per acre were derived from estimates of the total revenue produced by each type of land use divided by the number of acres. Data limitations in Escambia County precluded distinctions between commercial and industrial acreage. Therefore, the model took an average from both types of land use to determine the amount of tax revenues and the number of employees per acre associated with commercial and industrial land.

22/ The residence of alternative use employees was projected for the district and the county or SMSA, but not for the site itself.

23/ Alternative use employees are assumed to have the same commuting patterns as base civil service employees.

24/

$$\text{Percentage of induced income accruing to district residents} = \frac{\text{Percentage change in population, site employees living in the district, from current to alternative use}}{\text{Percentage change in population, site employees living in the county or SMSA, from current to alternative use}} \times \text{Current percentage of total induced personal income accruing to district}$$

25/ Because employees who shop in the district may also shop on the site if it houses commercial facilities, the model would be double-counting employees' contributions to commercial property tax revenue if it were to separately consider commercial tax contributions from alternative use employees and from facilities on the site itself.

This was not a concern in Douglas and Chambersburg, where there would have been no commercial facilities on the site. In Escambia County, it was not much of a concern because alternative use was considered prospectively, i.e., the model assessed what would happen to the site if the base were to close in the near future. Empirical studies of base closures by the Department of Defense have shown, for the most part, that closures have scarcely affected local retail trade in the short run and have resulted in strengthened retail trade in the long run. (*See* especially John Lynch's *Local Economic Development After Military Base Closings* 288, 1970, and David Mackinnon's "Military Base Closures: Long Range Economic Effects and the Implications for Industrial Development" in *AIDC Journal*, July, 1978.) The model, which considers developments over the long run, therefore assumed that the commercial sector off base in Escambia County would not have been changed under alternative use and that the amount of commercial property tax revenue in the district would have increased in the long run by the amount yielded by commercial establishments on the site.

In Bellevue, it is likely that the concentration of commercial establishments under alternative use would have been different from what it is now. As a result of the Federal presence, the commercial sector is little developed along Highway 73-75, which is probably the most desirable location for commercial establishments in Bellevue. Offutt Air Force Base owns property along one side of the highway and the other side has been placed under commercial restrictions at the request of the base. The model assumes that the focus of commercial activity in Bellevue under alternative use would have shifted to this part of town. It therefore considers just the commercial property tax contributed by facilities on the site itself, which would have included substantial contributions from non-site employees as well as site employees.

26/ *See* note 23, *supra*.

27/

$$\frac{\text{Percentage change in total consumption, district residents}}{\text{Percentage change in total consumption, county or SMSA residents}} \times \text{Current percentage of consumption done in district}$$

SUMMARY OF THE ADMINISTRATION'S TESTIMONY BEFORE THE COMMISSION

The Commissioner of Education, testifying before the Commission in Washington, D.C. January 31, 1980, on behalf of the Secretary, gave a statement asserting:

> (1) that, since Federal installations are actively sought by communities, fully knowing that Federal property is tax exempt and that new workers and their families may require additional services, the assumption must be made that most communities consider Federal activities a net economic plus;
>
> (2) that, since part of the problem is that the financing of local educational agencies has been tied to reliance upon property taxes and, therefore, local educational agencies generally cannot tax the wealth brought in by Federal expenditures, this can be viewed as an ineffectiveness of the State and local educational financing systems and not necessarily a responsibility of the Federal Government;
>
> (3) that, since the Federal "impact" entitlements far overstate local need, the Education Department is proposing, as part of its FY 1981 budget procedures, "modest" reductions in "A" payments and "drastic" reductions in "B" payments;
>
> (4) that there is little justification for "B" payments in that most "B" children live in private residences subject to regular property taxes and that, in the case of children in public housing, the Federal Government initially provided capital funds to help eradicate slum housing which, while producing little in property taxes, provides in-lieu of tax payments to local governments; and
>
> (5) that, under the Education Department proposal, based upon fiscal year 1980 payment schedules, a local educational agency would, in order to be eligible for any "A" payment, have to have had a fiscal 1980 "A" payment equal to at least 2.5 percent of its total current operating expenses; and, in order to be eligible for "B" payments, a local educational agency would have to have had a fiscal 1980 payment equal to at least five percent of its current expenditures; and, in addition, no local educational agency could receive a fiscal 1981 payment in excess of its fiscal 1980 payment.

Under the fifth point above, the Education Department testified that 81 percent of school districts within local educational agencies which would lose their entitlement on the basis of "B" children under the Administration's proposal would suffer a loss which is less than one percent of their total expenditures. No local educational agency would lose more than five percent of its expenditures. Also, 94 percent of districts within local educational agencies cut out by the proposal would suffer a loss of less than two percent of their expenditures. Only one percent of those local educational agencies losing their Impact Aid funds would absorb the full five percent.

Subsequent revisions to the Education Department's budget request submitted in March 1980 would make the total amount available under section 3(a) and section 3(b) 70 percent of the 1980 level, in effect reducing payments by about 30 percent. In the original budget announced in January 1980, an amount equivalent to the 1980 level would have been available for payments to these local educational agencies. In all other areas, the revised 1981 budget for Impact Aid is identical to the budget announced in January.

Witnesses representing the Education Department appeared, at the request of the Commission, a second time at the Commission's final hearing in Washington, D.C. on May 28, 1980. In preparation for that hearing, the Education Department was requested to elaborate on its position supporting a reduction in Impact Aid as presented by Commissioner Smith in his January 31, 1980, testimony.

The Commission requested a discussion of the Education Department's policy toward Impact Aid without regard for budgetary considerations. Specifically, the Commission was interested in the Department's position with regard to each of the following issues, which the Commission agreed would be areas on which it would make recommendations in its Report to be submitted to the President and the Congress September 1, 1981. Those issues are:

(1) The kinds of ownership and use of land by the Federal Government which warrant consideration in an Impact Aid Program, including, but not limited to, Indian lands, low-rent public housing, post offices, and leasehold interests;

(2) The criteria, if any, which school districts should satisfy to be eligible for Impact Aid;

(3) Whether in-lieu of taxes payments from other agencies should be taken into consideration in determining the amount of Impact Aid payments;

(4) Compensation for the increased costs caused by sudden and substantial enrollments resulting from Federal activities;

(5) Whether the present provisions for including children of Cuban refugees should be expanded to include Indochinese refugees and children of undocumented aliens;

(6) Whether local educational agencies should be compensated for the costs they incur in complying with Federal laws and regulations;

(7) The method of calculating the amounts to which local educational agencies are entitled;

(8) The obligation of the Federal Government with respect to the education of federally-connected children;

(9) State treatment of Impact Aid payments in their programs of payments to local educational agencies, including equalization plans;

(10) The treatment of federally-operated schools for military dependents; and

(11) Priorities in allocating funds when appropriations are insufficient to satisfy all entitlements.

That request also noted that the Education Department's position on each of these issues was essential to a fair and thorough consideration of the Impact Aid Program.

The evidence submitted in response to that request at the hearing can be summarized as follows.

The Department began by stating that it is not possible to explain departmental policy on Impact Aid without regard to budgetary considerations, as requested by the Commission, stating that many of the issues raised by that request have direct budgetary implications, especially during a period when the Administration and the Congress are committed to eliminating the deficit in the Federal budget.

The Department testified that arguments presented during previous testimony represent the central reason for reductions proposed by the Education Department. Three points were made:

(1) Payments are made to local educational agencies which appear to suffer little or no burden and may even benefit from Federal activities. Impact Aid payments to these local educational agencies--with low percentages of Federal children--are small when compared with other revenues. In districts where Impact Aid students constituted fewer than ten percent of all students, Impact Aid payments averaged less than one percent of the amount of revenue received from State and local sources. Local educational agencies with lightly impacted districts are much less dependent on Impact Aid funds than heavily impacted ones and could adjust to the elimination or reduction of these payments without suffering any undue hardships. These local educational agencies with lightly impacted districts tend to be at or above State average property wealth suggesting that these local educational agencies receiving Impact Aid have not been significantly burdened by Federal activities.

(2) Payments are made under Impact Aid to children who are not associated with a substantial burden that is federally-imposed upon a local educational agency. Some "B" payments are made despite the fact that they are for children whose parents live on property which is subject to regular property taxes and whose income is subject to State and local taxation. Other payments are made for public housing children despite the fact that public housing is locally rather than federally-owned and the Federal Government provides substantial aid to the communities in the form of housing subsidies, debt service guarantees, and in-lieu of taxes payments.

(3) Methods used to calculate entitlement based on local contribution rates have been criticized as imprecise, resulting in considerable windfall payments because they rely on criteria that may fail to reflect the impact of Federal activities. The comparable district method provides a poor approximation of what local education costs would have been in the absence of Federal impact. In effect, local educational agencies are able to maximize their Impact Aid payments by selecting the most favorable districts for comparison.

The Education Department continues to conclude that, based on available information and in the absence of any data to the contrary, entitlements under the existing law far overstate the actual burden imposed by the Federal Government. Compensation for Federal burden is the central reason for the existence of the Impact Aid Program, the Education Department asserts; Impact Aid is not a general program of aid to education.

In response to questioning on the number of children of military personnel that would be eliminated from the Impact Aid program, the Department stated that in eliminating payments for two-thirds of the "B" children, 234,000 of the 341,000 military "B's" would be eliminated.

Responding to the observation that a local educational agency might refuse to educate federally-connected children if 3(a) payments are reduced sufficiently, the Department stated clearly for the record that it does not want to move in the direction of more section 6 schools.

The Department also stated that the Impact Aid Program does not carry as high a priority as some other education programs as regards the overall education budget. The major priority is equalizing educational opportunity for disadvantaged students, which places a greater emphasis on funding categorical programs.

SPECIAL BURDENS LOCAL EDUCATIONAL AGENCIES BEAR BECAUSE OF A FEDERAL PRESENCE IN THEIR COMMUNITY

This appendix is a summary of hearing testimony regarding special burdens local educational agencies bear because of the Federal presence in a community. These situations are addressed: the effect of a highly mobile military population, the special problems of sparsely populated school districts, and the effect of energy development in western States, which is taking place in many cases on federally-owned land.

The Military and Mobility

The Federal Government, as an employer, transfers personnel from one installation to another to accomplish Federal policy. This is especially true of the defense establishment. Because of this mobility, the military presence in a community causes impacts over and above the basic cost of educating military dependents. Serving a fluctuating, mobile population affects the resources of a local educational agency. Also, mobile students have special educational and psychological needs.

Constant turnover in a local educational agency's enrollment creates both financial and administrative problems. A school with an enrollment of 1,150 students--1,000 of them being military dependents--can have a 20 to 30 percent turnover in one year. Local educational agencies must replace textbooks, workbooks, and other materials--in some cases up to 15 percent of their supplies yearly. Of the nearly 90 local educational agencies testifying that fluctuating enrollment due to a military presence was creating administrative, clerical, and personnel problems, over 60 percent or two-thirds of them further testified that those students connected with the military needed diagnostic testing, remedial teaching, counseling, or special education. Providing an integrated, sequentially developed curriculum and testing program for students entering or leaving during a school year costs a local educational agency time and money because additional paperwork, bookkeeping, specialized teachers and instructional aides, and materials are required to serve those students. In addition, local educational agencies find long range planning difficult when many students enter and leave during a school year.

The frequency, suddenness, and unpredictability of military reassignments can cause serious social and psychological stress on military dependents. This stress contributes to the instability of the family and a lack of commitment to become involved in the community. Also, family patterns are often nonstandard. For example, many students live in single-parent households because the second parent is on extended duty on ship. These students frequently have lengthy absences from school while the family moves from one base to another or from one Government project to another.

Poverty is not uncommon to military families. Lower military ranks frequently live in public housing and use food stamps at commissaries. In addition to the needs of military dependents, these children bring to school the special needs of the disadvantaged student.

A significant number of military parents are married to non-English-speaking spouses, which can create learning problems for the children. These children lack a sufficient command of English and experience difficulty in classrooms because English is not spoken at home. It is sometimes necessary for a local educational agency impacted by a military installation to establish special language programs to meet the needs of foreign born military dependents and military dependents of foreign nationals.

Many military children travel through two or more school systems annually. This interrupts a child's sequentially developed learning experiences. Each time a child changes schools, the child is exposed to different texts and different techniques. Education programs which are not consistent from area to area can cause children to arrive far behind or ahead of new classmates, generating a traumatic dislike for school which impedes adjustment. Special help is usually required in reading since a move often involves a change in reading series. A child may be frustrated when introduced to a new reading series, needing special help for vocabulary and reading skills. Classroom teachers do not have the extra time to meet these individual needs, though instructional aides may help a child to catch up and progress normally within a grading period.

More testing for grade placement, achievement, and special education is required for highly mobile students because mobility increases the need for remedial assistance, extra counseling, and psychological services. In addition, testing sometimes must be duplicated because by the time a student is identified as needing special services and a local educational agency begins the documentation and diagnosis, the student may be transferred.

The military permits "compassionate assignment" of civilian employees and military personnel with handicapped children to areas with outstanding educational programs for children with special needs. Because servicemen request assignment to an area with a well-known program for the handicapped, local educational agencies with those programs can be overburdened. While some revenues for education are received from property taxes paid by these parents, the cost of special programs far exceeds any State aid, Impact Aid, and Public Law 94-142 funds available for those purposes. (For example, in Fairfax County, Virginia, education for an emotionally disturbed child costs $11,387 annually; the Impact Aid for such a handicapped military dependent is $668.) In addition, the effectiveness of special programs is diluted when compassionate assignment increases enrollment so that teachers end up handling more students than they should to achieve maximum results.

Sparsely Populated School Districts

Western States--especially those with Indian lands--have special transportation problems because of the sparsity of the population and concomitant problems such as poor roads and inadequate housing.

A typical sparsely-populated school district is Todd County School District in Mission, South Dakota, which covers 1,400 square miles and has an average daily membership of only 1.2 students per square mile. Todd County transports 65 percent of its students; the buses travel 1,700 miles per day. These transportation needs are very costly to school districts. In Arizona, for example, the average local educational agency transportation budget is five to seven percent; on Indian lands, which are characteristically sparsely populated, it can be as high as 17 to 20 percent.

Federal laws such as Public Law 94-142 further add costs to budgets that already have an inflated transportation allotment. If the facilities in a local educational agency are inadequate to provide special services to students in need of them--and some of these agencies can barely afford basic education--then the child with special needs must be transported as far as 100 miles, one way, to facilities that can meet those needs.

In addition, while Arizona only recognizes and supports a half-day kindergarten program, local educational agencies with sparsley populated school districts cannot afford to run half-day programs because of high transportation costs. Thus some local educational agencies run kindergarten all day, increasing the cost, but collecting no aid from the State to defray such cost.

In sparsely-populated school districts, roads are usually in poor condition; many consist of gravel and dirt. Gravel and dirt roads shorten the life of school buses and, in some cases, require the use of four-wheel drive vehicles. All this adds to the cost of transportation.

Local educational agencies with sparsely-populated school districts also have a high staff turnover because salaries are often low. Also, it is often necessary for an agency with sparsely-populated school districts to pay for housing for its employees, without which it would be difficult to attract or retain staff at all.

Energy Development

The Federal Government owns vast areas of land in the western States, portions of which are being used increasingly to meet the energy needs of the Nation. Usually those areas have a small school system with a tax base capable of supporting only that small system. These small school systems, such as the Meeker School District Re-1 in Colorado, are unable to meet the needs of the increased population which accompanies the energy development industry. Not only do such installations and industries engender an explosive growth in population, but that population is an unstable one. The construction phase may bring in workers of one kind, whose children have special educational needs. Later, when the installation is operative, the children of engineers and other professionals have different needs. In addition to a concern for maintaining basic educational levels, the local educational agency must make special provision for a mobile and varied student population.

Other problems accompany the energy development industry. A local educational agency must maintain high educational standards to satisfy the needs of professionals--such as nuclear physicists and engineers--associated with the energy industry. The Richland School District in Washington, site of the Hanford Nuclear Reservation, responds to this need by offering many courses not usually found in a small local educational agency. The Department of Education has expressed concern that expansions in enrollment may endanger the accreditation of various schools by making the teacher/pupil ratio too high. This situation exists in Idaho Falls, Idaho, the site of 51 nuclear reactors. The industry personnel there give priority to high quality educational services for their children. The district is hard-pressed to meet these demands because its tax base is limited by extensive federally-owned, tax-exempt land.

In the Meeker School District Re-1, where 31 percent of school enrollment is federally-connected but Impact Aid funds account for only five percent of the school budget, teaching salaries cannot compete with salaries offered by the burgeoning energy industries nearby. There is marked staff turnover there because of the draw of higher industry salaries. In Tullahoma, Tennessee, higher salaries at the Atomic Energy Development Commission have resulted in the relocation of local businesses, which diminishes the local educational agency's industrial tax base.

Conclusion

The situations described in this appendix show that local educational agencies bear many financial burdens for which Impact Aid does not compensate directly. The details presented are examples of the subtle ways in which costs arise when a local educational agency is affected by a Federal presence in the community.

TESTIMONY BEFORE THE COMMISSION REGARDING FEDERAL INVOLVEMENT IN PUBLIC HOUSING

The Director of the Division of Policy Development, Housing and Urban Development (HUD), Feather O'Connor, and the Director of the Fiscal Management Division, HUD, Kenneth Moul, testified before the Commission May 29, 1980, in Washington, D.C. In response to questions, they provided the following information regarding the extent and degree of Federal involvement in local public housing.

In its subsidy of public housing under the Housing Act of 1937, HUD assists approximately 3,000 local public housing authorities. It is estimated that about 150 of those authorities have in their care 70 percent of the low-rent public housing units in the country.

In 1979, there were 10,700 subsidized projects in management. It was anticipated that in 1980, 40,000 projects would be started; in 1981, about 55,000 units.

The total subsidy cost of low-rent public housing projects is $1,650 per unit per year. The operating subsidy portion is about $725 per unit per year.

O'Connor estimated that the foregone taxes on these federally-assisted projects are between $250 and $400 per unit per year. Nationally, the tax foregone by local governments because of the tax-exempt status of these projects, netted out against payments in-lieu of taxes (PILOT), is around $438 million a year. Although there are a number of local governments which, for a variety of reasons, receive no PILOTs, the payments per month around the country are somewhere in the range of $2.00 to $3.00 per month per unit. O'Connor pointed out that it is because local governments must forego taxes that some local governments are reluctant to build public housing.

There has been a history of interchange between the Department of Health, Education, and Welfare (HEW) and HUD regarding the public housing component of Impact Aid. Since 1974, when the public housing component was added to the Impact Aid formula, HUD has taken the position that the component is an "important element" of the program. It provides what HUD considers "an important urban cast" to Impact Aid assistance. It also assists local governments in providing "essential services" which, without in-lieu of tax payments, they might not be able to provide otherwise. On two occasions, in 1978 and 1979, then-Secretary of HUD, Patricia Harris, corresponded with Joseph Califano, then-secretary of the Department of Health, Education, and Welfare (HEW), expressing HUD's strong opposition to removing the public housing component from the Impact Aid formula. Harris said she felt that it would destroy an incentive for local governments to accept public housing and its loss would have a significant effect on those local governments.

Low-rent public housing is more popular in some areas of the country than in others; non-uniform distribution of public housing means that people needing it must move to an area where it is available. It has been noted that there is some interstate and intercounty migration of families in order to obtain low-cost housing. However, HUD asserts this migration is as likely caused by availability of employment as by low-cost housing.

Before a local housing authority can receive Federal assistance, the Federal Government requires it to enter into a cooperation agreement with every agency having taxing jurisdiction in the area. That agreement exempts public housing from taxation and provides for payments in-lieu of taxes (PILOTs). That payment is computed on the basis of ten percent of the shelter rents on the project. If the school district is dependent, the housing authority would enter into a cooperation agreement with the local governing body, which would receive the PILOT and would be responsible for distributing the funds. In the case of an independent school district, the housing authority should enter into a cooperation agreement with the local educational agency having jurisdiction over that school district in addition to the local governing body. That agreement would provide for the distribution of the PILOT to the school district based on an arrangement between the school district and the local governing body. Generally, PILOTs are made to every taxing jurisdiction to provide services that would otherwise be paid for through taxes.

For various reasons, some local governments have waived receipt of PILOTs. In 1973, about 12 percent of the housing authorities did not pay PILOTs. HUD does not know whether this was because of cooperation agreement waivers or because housing authorities did not have the money to pay.

The Federal Government maintains a strong influence in the policy decisions and day-to-day operations of the local housing authorities. Over the years its role in decisions regarding placement of public housing units has grown. O'Connor testified that "the Federal Government has a stronger role...in a decision to place a public housing unit than...might have [been] characterized in the past." Further, the annual contributions contract between HUD and the local housing authority contains a "fair" number of requirements which constitutes 40 pages. Also, HUD governs "by regulation tenant assignment policies, tenant selection policies, rent ranges, and tenant eviction policies" and decides whether or not funds will be allocated for modernization and rehabilitation. While day-to-day management and many specific policies are handled by local housing authorities, "they share with [HUD] the responsibility for the quality of the living environment" of the public housing projects.

In short, while federally-assisted public housing, "theoretically, at least, [is] not owned by the Federal Government and is not Federal property,...the Federal Government does maintain a great deal of policy decision making in the day-to-day operations of [public housing]."

TEXT OF MAY 6, 1980 LETTER FROM THE COMMISSION TO SECRETARY OF EDUCATION HUFSTEDLER REQUESTING FURTHER TESTIMONY

* * * *

The Commission on the Review of the Federal Impact Aid Program, created by Section 1015 of the Education Amendments of 1978 to review and evaluate Public Law 874, 81st Congress, has been studying the program for nearly six months now. We held our first hearing January 31, 1980, in Washington, D.C. Commissioner of Education William Smith gave testimony at that hearing describing the Administration's proposal for reducing the Impact Aid Program in fiscal 1981. We have held hearings in seven other locations around the country at which hundreds of school districts have responded to the Administration's proposal. We will be holding our final hearing in Washington, D.C., May 28, 1980. The Commission wishes to invite you to testify at that hearing to elaborate further the Administration's position regarding Impact Aid.

The Commission is particularly interested in the following:

(A) Evidence in addition to that presented by Commissioner Smith in his January 31 testimony to support a reduction in Impact Aid. That testimony asserted that (a) since communities seek Federal installations, it can be assumed that there is a net economic benefit to communities with Federal installations; (b) if revenues from net economic benefits conferred by a Federal installation are not available to school districts, this is the result of reliance upon property taxes for support of education and reflects the ineffectiveness of State and local educational financing systems rather than Federal responsibility; and (c) Impact Aid payments should not be made to school districts on the basis of children residing on private property since their residences are subject to property tax;

(B) A discussion of the Administration's policy toward Impact Aid without regard for budgetary considerations. Specifically, the Commission is interested in the Administration's position with regard to each of the following issues which it has been agreed will be areas in which the Commission will make recommendations in its Final Report to be submitted to the President and the Congress December 1, 1980. Those issues are:

(1) The kinds of ownership and use of land by the Federal Government which warrant consideration in an Impact Aid program, including, but not limited to, Indian lands, low-rent public housing, post offices, and leasehold interests;

(2) The criteria, if any, which school districts should satisfy to be eligible for Impact Aid;

(3) Whether in-lieu of taxes payments from other agencies should be taken into consideration in determining the amount of Impact Aid payments;

(4) Compensation for the increased costs caused by sudden and substantial enrollments resulting from Federal activities;

(5) Whether the present provisions for including children of Cuban refugees should be expanded to include Indochinese refugees and children of undocumented aliens;

(6) Whether local educational agencies should be compensated for the costs they incur in complying with Federal laws and regulations;

(7) The method of calculating the amounts to which local educational agencies are entitled;

(8) The obligation of the Federal Government with respect to the education of federally-connected children;

(9) State treatment of Impact Aid payments in their programs of payments to local educational agencies, including equalization plans;

(10) The treatment of federally-operated schools for military dependents;

(11) Priorities in allocating funds when appropriations are insufficient to satisfy all entitlements.

The Administration's position on each of these issues is essential to a fair and thorough consideration of the Impact Aid Program by the Commission. We hope to be able to learn of those views through your testimony.***

THE HISTORY OF FEDERAL INVOLVEMENT IN PUBLIC HOUSING

In the early 1930's, the United States Public Works Administration, headed by Harold L. Ickes, formed a new department known as the Public Works Emergency Housing Corporation. This Department funded low-rent public housing projects, in Ickes' phrase, upon the "submission of a satisfactory low-cost housing projects [plan] which meets with our approval."[1] Originally, the program's objectives were to alleviate unemployment, clear slums, and provide adequate shelter as a "way station" for low-income families who, once able, would move on to unassisted housing.

In 1934, the New York Housing Authority submitted a low-rent public housing project proposal which was subsequently approved by the new Department with a promise of $25 million to fund the project. Third Street and Avenue A, known as Block #430 on the New York City Housing Authority's City Map of the time, thereafter became the "site for First Houses, the nation's first public housing project built by a municipal Housing Authority."[2]

With the passage of the United States Housing Act of 1937 a firm legal foundation was established for providing Federal assistance to low-rent public housing projects. The construction of public housing in the United States soon became synonymous with the 1937 Act. The 1937 Act created the United States Housing Authority (USHA). Under section 1, the USHA's broad mandate was to provide financial assistance to --

> the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary dwellings for families of low-income, in rural or urban communities, that are injurious to the health, safety, and morals of the citizens of the Nation.

To achieve this end, the Act gave the power to USHA to provide funding through loans, annual contributions, or capital grants to local housing authorities for the construction of low-rent housing developments and slum clearance. Of the three funding options, annual contributions proved to be the most practicable formula. Under it, the Federal Government and the local housing authority entered into a contract by which USHA annually subsidized local housing authorities for a period not to exceed sixty years. The amount of this subsidy was not to exceed yearly interest and amortization charges and was reduced by the excess of receipts over expenses in the operation of each project. Basically, the Federal Government bore the acquisition and development costs of the

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1/ Office of Public Information, New York City Housing Authority, New York City Housing Authority--A Legislative and Fiscal History 1 (1980) [hereinafter cited as NYCHA/LRPH History].

2/ Id.

project while the residents assumed the operating expenses through their rent payments. In addition, local housing authorities were vested with the responsibility of administration of the low-rent housing program, including responsibility for the establishment of rent and eligibility requirements.

The 1937 Act also specified that USHA could not contract with a local housing authority for development of a low-rent housing project unless "such project...is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision; and such contract...require[s] the public housing agency to make payments in lieu of taxes...." Those payments in-lieu of taxes must be "equal to 10 per centum of the sum of the annual shelter rents charged" in the project, or a lesser amount prescribed by State law or agreed to by the local government in its agreement for local cooperation.

The annual contributions contract (or "ACC" as it is called in housing parlance) remains the principal mechanism used by most housing authorities in the construction of conventional public housing developments.

During the period just prior to United States involvement in World War II, all government activities turned to defense. The Congress passed a law enabling housing authorities to build projects in overcrowded areas which were critical because the apartments could be rented to defense workers.[3] The first cities in the country to take advantage of this law were Montgomery, Alabama and Pensacola, Florida. During the post-War period there was a critical shortage of housing throughout the country. As the temporary defense housing, built in areas where war industries were located, became empty, the buildings were cut into panels, shipped to emergency areas and re-erected. Defense housing was also declared, by Presidential Proclamation, to be low-rent housing.[4]

In the decade following its enactment, the United States Housing Act of 1937 was amended many times. It was not until the approval of the Housing Act of 1949, however, on July 15, 1949, that the Federal Government initiated a new national housing policy. Section 2 of the 1949 Act set out a national goal, to be realized as soon as feasible, of a "decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation."[5]

3/ Lanham Act, Pub. L. No. 76-849, 76th Cong., 3d Sess., 54 Stat. 1125-1128 (1940).

4/ C. P. Rogers, History of First Twenty-five Years in Operation of Montgomery Housing Authority 1, 4, 6 (1964) (unpublished paper by the Executive Director of the Housing Authority of the City of Montgomery, Alabama).

5/ NYCHA/LRPH History, supra note 1, at 2.

The Housing Act of 1954 broadened the slum clearance and urban redevelopment program of title I of the 1949 Act. Its intention was made plain by its title--"Slum Clearance and Urban Renewal." This amendment to the 1949 Act authorized Federal assistance to local communities not only for the clearance of slums but also to help them in preventing the spread of urban blight through the rehabilitation and conservation of blighted and deteriorating areas. New contracts for Federal assistance to clear slums could not be entered into unless the community as a whole had presented and approved a "workable program" for eliminating and preventing slums.[6]

The responsibility for the administration of the Nation's public housing program has changed hands several times since the program's inception.[7] In 1965, the new Department of Housing and Urban Development was established, which elevated housing and urban development to the Cabinet level. The new Executive Department of the Federal Government subsumed the Housing and Home Finance Agency and all of its legal powers.

The Housing and Urban Development Act of 1965 authorized increases in annual contributions enabling construction of new units, and the purchase and rehabilitation of existing housing. The 1965 Act added a new Section 23 to the 1937 Act to authorize local housing authorities to lease private accommodations for low-income applicants (known as "Section 23" housing). The Act also authorized ACCs for leasing 10,000 private units per year. Project costs, serving as a basis for the payment of ACCs, would include the cost of surveys and unit inspections by the local authority. ACCs for leased housing could not exceed the amount authorized for comparable new public housing apartments and the housing agency was not permitted to lease more than ten percent of the units in any one apartment house. The 1965 Act provided further for the retention of control by the local authority over the selection, removal and rent to be charged to occupants of Section 23 leased units. The rent was to be negotiated by the local housing authority and the private owner. The local housing authority could lease units for a minimum term of one year (maximum of three) with the power to make unlimited renewals.[8]

Subsequent amendments (1966, 1968, 1969, and 1970) enlarged and broadened the public housing program by increasing the authorizations for annual contributions, and making substantive changes. The 1970 amendments, for example, gave local authorities the power to lease apartments

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6/ _Id._ 10.

7/ The Federal Works Agency had jurisdiction of housing programs from the early 1930's to 1937; the United States Housing Authority, 1937-1942; the Federal Public Housing Agency, 1942-1947; the Public Housing Administration, a department within the Housing and Home Finance Agency, 1947-1965.

8/ _Id._ 11-14.

in new as well as existing dwellings. The "leasing" idea, with its obvious attraction to the private sector, was to play a prominent role in the creation of the Housing and Community Development Act of 1974.[9]

The Housing and Community Development Act of 1974 established what is presently referred to as "Section 8" housing. In sum, the program called for the local housing authority to make monthly payments to an approved landlord on behalf of an eligible tenant. These payments would constitute the difference between the rent that the tenant could afford to pay for the apartment and the established fair market rent for the apartment. The goal of the program is "economically mixed" housing. Instead of "blockbuster" developments constructed in neighborhoods to house low-income families, the program was based on the premise that the private sector of housing would more naturally house low-income families without the major social and political disruptions which were perceived to be endemic in the conventional public housing program.[10]

Development of new public housing projects was temporarily suspended on January 5, 1973, when President Nixon declared a moratorium on the provision of funds for federally-subsidized housing. The moratorium was lifted February 7, 1977.

Presently, the primary objective of the Nation's public housing program is to provide adequate shelter in a decent environment for families that cannot afford such housing in the private market.

Under the United States Housing Act of 1937, as amended, the Department of Housing and Urban Development (HUD) is authorized to provide financial and technical assistance to public housing agencies (PHAs) for the development of low-income housing projects. (Generally, a PHA is created pursuant to a State's housing authority law which provides for the establishment of PHAs with all necessary legal powers to carry out low-income housing projects; the PHA will have, among other things, an Organizational Transcript approved by HUD and the ability to secure the local cooperation required by the 1937 Act.) PHAs finance development of the projects through the sale of notes or, sometimes, long-term bonds. HUD provides PHAs with technical assistance in planning, developing and managing projects and financial assistance in the form of preliminary loans for planning purposes and annual contributions to (1) cover debt service on the notes (and/or bonds), (2) assure the low-income character of the projects, and (3) achieve and maintain adequate operating and maintenance services and reserve funds.

Presently, there are three basic methods PHAs use to provide housing projects: conventional, turnkey, and acquisition with or without substantial rehabilitation.

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[9] Id. 14.
[10] Id. 14-15.

Until 1965, PHAs developed public housing almost exclusively by the conventional method. Under this method, the PHA employs an architect to prepare plans and, after HUD approval, advertises for competitive bids to build the specified project on a site owned by the PHA. The construction contract is awarded to the lowest responsible bidder. PHAs obtain construction financing initially from direct HUD loans, but as development progresses, PHA notes are sold to private investors. After construction is completed and a PHA has obtained permanent financing, HUD makes annual contributions to the PHA sufficient to meet the principal and the interest payments for PHA notes and bonds. This contribution covers the entire capital cost of the project.

Under the turnkey method, developed administratively in 1965, a PHA invites private developers to submit proposals to build new housing for purchase when completed (in other words, the purchaser (the PHA) of the project buys it only when it is time to "turn the key" and take possession of the property). The PHA publicly advertises the number and size of units needed, the general specifications (such as unit size and special features) and other guidelines. The PHA finances the purchase of the project by selling notes or bonds (or both), which are secured by HUD's pledge to make annual contributions sufficient to cover the legal debt service. This method brought a wider range of participants into the field of subsidized housing, especially private industry. It permitted faster construction of more units because it tapped the resources of the private homebuilder. The turnkey method was favored over the conventional method because it involved something that critics of public housing had long since charged was missing--neighborhood participation in the selection of the size and type of housing project to be constructed in their communities.

As of 1980, HUD has estimated there are 1,134,000 units[11] of public housing under management. In recent years, the Federal subsidy obligation has been increased by the addition of operating subsidies to enable local housing authorities to achieve and maintain adequate operating and maintenance services for their housing projects. In fact, the Federal operating subsidies have become essential for keeping local housing authorities solvent while maintaining the low-income character of assisted projects. The operating subsidies have increased from $6.5 million in 1969 to $729 million in 1979. The average operating subsidy per dwelling unit has increased from $8.36 in 1969 to $645.33 in 1979. In view of inflation and the inelasticity of tenants' rents, HUD contends that it is reasonable to assume that the level of the operating subsidies is likely to continue to increase and that this trend will

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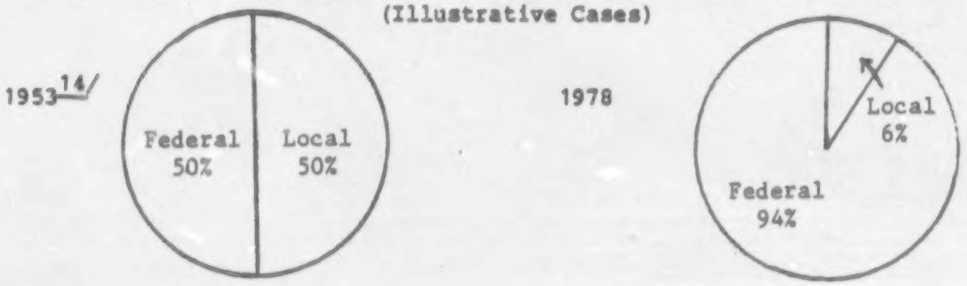
11/ Estimated figures provided by HUD sometimes differ according to the office within the department compiling the data. The Commission, therefore, notes the disparity between the estimated figure of 1,134,000 units supplied by the Office of Policy Development and Research, and the estimate of 1,192,000 units provided by the Housing Budget Division of HUD in Attachment I, *infra*.

probably increase the Federal financial obligations for public housing.[12]

The following pie charts illustrate the estimated shift in Federal-local shares of financial support for public housing between 1953 and 1978. In these, all indirect (foregone Federal and local taxes, and Federal administrative overhead), as well as direct costs, are considered.

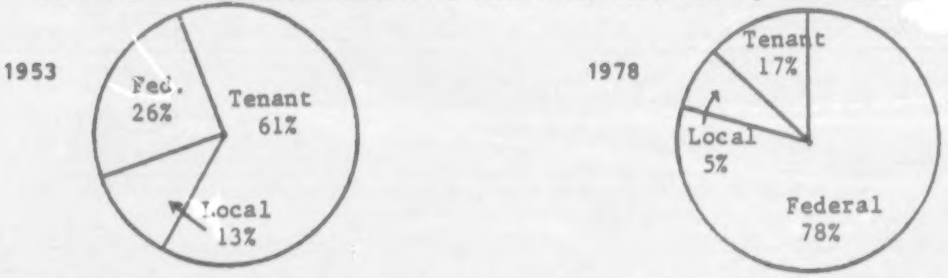
LOCAL-FEDERAL SHARES OF PUBLIC HOUSING SUBSIDIES, 1953 and 1978[13]
(Illustrative Cases)



Total Subsidies:	$248/unit/year
Local:	$122/unit/year
Federal:	$126/unit/year

Total Subsidies:	$3850/unit/year
Local:	$ 220/unit/year
Federal:	$3630/unit/year

LOCAL-FEDERAL-TENANT SHARES OF PUBLIC HOUSING COSTS, 1953 and 1[illegible]



Total Costs:	$687/unit/year
Local:	$ 89/unit/year
Tenant:	$419/unit/year
Federal:	$179/unit/year

Total Costs:	$4650/unit/year
Local:	$ 220/unit/year
Tenant:	$ 800/unit/year
Federal:	$3630/unit/year

12/ Office of Policy Development and Research, Department of Housing and Urban Development, Payments In Lieu of Taxes: A Status Report 4 (March 19, 1979) [hereinafter cited as HUD PILOT Study].

13/ Id. 27.

14/ If public housing developments were not tax-exempt, the full local tax levied would have been $33.6 million for 1953. The PILOT for the year was $8.6 million, making the local contribution by way of tax exemption $25 million. That amount was approximately equal to the Federal contribution of $25.9 million, essentially a 50-50 sharing of costs. (*Id.* 18-19.)

15/ HUD PILOT Study, *supra* note 12, at 27.

The Role of HUD in the Local Operation of the Public Housing Program. Although public housing is owned and operated by local housing authorities, almost every aspect of development, operation and management, and disposition is regulated by HUD. The following is a listing of some of HUD's major responsibilities in the administration of the public housing program:

(1) Development

(a) Approval of local housing authority organizational documents.

(b) Making of loan commitments and loans.

(c) Approval of development cost budgets.

(d) Approval of technical determinations, site selections, utility combinations, architects' fees, and plans and specifications.

(e) Approval of contract awards, contracts of sale, notices to proceed, contract extensions, change orders, and advances.

(f) Approval of acquisition and rehabilitation of existing buildings.

(2) Management and Operation

(a) Approval of operating budgets, operating subsidy, annual contributions, administrative loans, and related local housing authority funding requisitions.

(b) Approval of income limits and criteria for occupancy, tenant selection and assignment plans, rent schedules and related definitions of income, and authorizations for occupancy by single persons, project employees, and persons providing tenant services.

(c) Approval for use of dwelling units as nondwelling space, conversion of dwelling unit sizes, and changes in project composition as to number of dwelling units.

The degree of detail with which the Federal Government regulates the public housing program belies strictly local control of the development and administration of public housing.

The Role of the Local Housing Authority in the Public Housing Program.[16/] Under the public housing program, HUD can enter into a contract for financial assistance with a public housing authority, which may be a

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[16/] The material for this section was compiled, in part, from a HUD publication entitled Low-Rent Housing Guide Orientation to the Program - A HUD Guide, Chapter 3, at 1-2 (publication #HM G 7401.3) (April 1971).

State, county, municipality, or other governmental entity or public body authorized to engage in the development or administration of low-rent housing or slum clearance. In almost all cases, the public housing agency is a local housing authority--an autonomous public-corporate entity created in accordance with State or Territorial Law, Indian Tribal Ordinance, or, in the case of the District of Columbia, by Act of Congress. It functions in the capacity of a developer and manager of a low-rent housing program. It has the responsibility for planning, financing, constructing or purchasing, leasing, and managing the properties, subject to applicable laws and contractual relationships with HUD and the local governing body. By virtue of its ownership or leasehold interest in the properties, the local housing authority performs all the functions of a private owner, including leasing units, collecting rents, maintaining the properties, and all of the other related duties. Similar functions may be performed by private management firms under formal agreements with the local housing authorities.

There are two contractual relationships which form the basis of the local housing authority's obligations and responsibilities to HUD and the local governing body: the Annual Contributions Contract and the Cooperation Agreement.

The Annual Contributions Contract (ACC) between the local housing authority and HUD translates the purposes and provisions of the United States Housing Act of 1937, as amended, into specific contractual obligations and mutual responsibilities with respect to the development, operation, and fiscal aspects of the program, as well as with respect to defaults, breaches, remedies, and general provisions. The Contract provides for loans to the local housing authority during the development phase of conventional, turnkey, and acquisition projects, and for subsidies or contributions during the operating period to cover amortization of the bonded indebtedness and to maintain the low-rent character of the projects. Under the leasing program, annual contributions make up the difference between rental paid by low-income families and rental charged by the owners of the leased dwellings, plus operating expenses of the local housing authority.

Once committed through an Annual Contributions Contract, the local housing authority has little discretion in the disposition of the property. Any proposal to demolish units must meet strict guidelines, including those governing relocation and replacement units, and must be approved by HUD. Moreover, as a result of a 1979 amendment, a local housing authority may not, without HUD approval, dispose of a public housing project for ten years after all operating subsidy payments for that project have ceased. Most older projects for which the original ACC 40-year term is near expiration have undergone modernization which extended their ACCs. Thus, Federal discretion over disposition of locally-owned property may continue for 20 years beyond the original agreement.

As a prerequisite to providing financial assistance, HUD requires, in accordance with section 5(e)(2) and 6(d) of the United States Housing Act of 1937, as amended, a binding contract called a Cooperation Agreement (Form HUD-52481) between a local housing authority and the local governing body having jurisdiction over where the housing is to be located. That Agreement provides for local cooperation with respect to the development, operation, and management of low-income housing owned by the local housing authority. The Agreement obligates the local housing authority to make payments in-lieu of taxes to the local governing body, and, in turn, requires the local governing body to provide local cooperation by maintaining the tax-exempt status of the housing projects and by providing the housing projects, at no cost, the same public services and facilities as are provided at no cost to others within the local governing body's jurisdiction. A local housing authority is required to have a Cooperation Agreement with the local governing body having jurisdiction over the site of the housing. In some cases, additional Cooperation Agreements may be required with other public bodies where State law requires or where necessary to secure services essential to the housing project. A local housing authority also may have to enter into separate Cooperation Agreements with different local governing bodies where projects are divided among different bodies. The Cooperation Agreement is a required document for all low-rent public housing projects except for Section 23 leased housing.

Payments In-Lieu of Taxes (PILOT). By law, one of the prerequisites that a local housing authority must fulfill prior to contracting for development of a low-income housing project is that --

> such project...is exempt from all real and personal property taxes levied or imposed by the State, city or other political subdivisions; and such contract...require[s] the public housing agency to make payments in lieu of taxes....

This requirement, a property tax exemption, is somewhat different from that generally applied to federally-owned properties as it stems from legislation (the United States Housing Act of 1937) rather than the exemption of properties from local taxation by virtue, alone, of their ownership by the Federal Government.

In lieu of taxes, local housing authorities make payments (PILOT) to the appropriate taxing jurisdiction in order to partially defray the cost of providing services to the project. The services to be provided and the exact amount of PILOT are delineated in the Cooperation Agreement; however, the 1937 Act establishes a maximum PILOT amount of ten percent of annual shelter rents (gross rents minus utilities). Payments in-lieu of taxes are paid out of the total revenues of the local housing authority which consist mainly of Federal operating subsidies and rental income.

The following table shows total PILOTs and payments per unit in the Nation since 1962. These payments have steadily declined from $39 per unit in 1965 to $26 per unit in 1975. In 1976, they increased for the first time in ten years to $30 per unit.[17]

PAYMENTS IN-LIEU OF TAXES, 1962-1981[18]

Year	No. of Units[19]	Total Payments	Payments Per Unit
1962	484,726	$17,154,361	$35.39
1965	570,787	$21,774,445	$38.65
1968	664,252	$24,771,210	$37.29
1970	753,638	$28,065,226	$37.24
1971	800,022	$29,137,000	$36.42
1972	882,786	$27,631,000	$31.30
1973	921,395	$26,757,000	$29.04
1974	974,000	$27,233,000	$27.96
1975	1,010,000	$26,300,000	$26.04
1976	1,045,000	$31,350,000	$30.00
1977	1,070,000	$34,797,000	$32.52
1978	1,086,000	$35,838,000	$33.00
1979[*]	1,130,000	$37,968,000	$33.60
1980[+]	1,134,000	$37,014,000	$32.64
1981[†]	1,193,000	$39,369,000	$33.00

*/ Assumes inflation rates of 10% for utilities; 5% for rental income.
+/ Assumes inflation rates of 12% for utilities; 6% for rental income.
†/ Assumes inflation rates of 8.8% for utilities; 6% for rental income.

HUD's record system provides an accounting of PILOTs, by HUD region,[20] but not by geographic unit smaller than a region.

The regional pattern for PILOTs in 1976, set forth in the following table, shows that in-lieu payments per unit vary considerably among HUD's ten regions, with the Boston region's payments averaging only $22 per unit compared to the San Francisco region's average of $46.[21]

17/ HUD PILOT Study, *supra* note 12, at 21.

18/ *Id.* 22. The data for 1977 through 1981 was prepared by HUD, pursuant to the Commission's request for information more recent than that provided by the HUD PILOT Study.

19/ *See* note 11, *supra*. The Commission notes the disparity in the number of units provided by the Housing Budget Division of HUD in Attachment I, *infra*.

20/ *See* Attachment II for a map of HUD's ten regions across the country, *infra*.

21/ HUD PILOT Study, *supra* note 12, at 21.

REGIONAL PATTERN FOR PILOT IN 1976[22/]

Regions	PILOT/Unit
I	$21.80
II	$32.39
III	$28.99
IV	$26.59
V	$27.29
VI	$24.30
VII	$31.51
VIII	$34.16
IX	$46.42
X	$44.97

The table below suggests that PILOT varies inversely with the size of the housing authority; the largest housing authorities make the lowest PILOTs and the smallest housing authorities make the highest PILOTs. This pattern has been maintained over several years. However, according to HUD, the distribution of public housing units is fairly proportionate across different parts of the country and across different sizes of communities. HUD also estimates that 75 percent of PILOTs go to metropolitan areas.

VARIATIONS IN PILOT PER UNIT MONTH BY SIZE OF LOCAL HOUSING AUTHORITY FOR FISCAL YEARS 1973 - 1976[23/]

Size of LHA	FY 1973	FY 1974	FY 1975	FY 1976
Large	$2.15	$1.95	$2.01	$2.10
Medium	$2.93	$2.79	$2.79	$2.96
Small	$2.79	$2.88	$3.05	$3.26
Average	$2.63	$2.54	$2.62	$2.78

Nonpayment of PILOT. School districts receiving Impact Aid because of children residing on low-rent public housing have testified before the Commission that they seldom receive any portion of payments in-lieu of taxes made to local governments by housing authorities. In some cases, accounting procedures may obscure sources of revenue so school districts receiving PILOTs are merely not aware of the payment. In other cases, however, local housing authorities do not make PILOT payments at all.

[22/] Id. 23.

[23/] Id. 24. Variations in PILOT per unit month by size of local housing authority are estimated by HUD based on an Urban Institute (Washington, D.C.) sample of 119 local housing authorities for fiscal year 1973 through fiscal year 1977. According to HUD, local housing authorities are given four alternatives for ending a fiscal year: March, June, September, or December.

Complete data on nonpayment of PILOT by all local housing authorities across the country is available for 1973, as set forth in the table below. This is the most recent information, according to HUD, which also speculates that, given the generally worsening fiscal position of local housing authorities since 1973, the percentage of nonpayment of PILOT may have increased.

Out of the total of 1,976 local housing authorities in the Nation, 241 did not make payments in-lieu of taxes in 1973. These account for 12.2 percent of all housing authorities. The most striking aspect of the difference amoung HUD regions is the percentage of authorities not making PILOTs. These percentages range from a low of 5.3 in Region VI (the middle Southwest) to a high of 41.9 in Region X (the Pacific Northwest). In five of the ten regions, the nonpayment rate is 25 percent or greater. A general pattern is revealed by the data indicating that in those regions where local housing authorities are more numerous, the nonpayment rate is relatively low. In contrast, the nonpayment rate is significantly higher in those regions where local housing authorities are relatively small in number.[24]

NONPAYMENT OF PILOT BY LOCAL HOUSING AUTHORITIES
BY REGION IN 1973[25]

(number of Authorities)

Region	Total	Paying	Not Paying	% Not Paying
I	91	75	16	17.6
II	104	77	27	26.0
III	104	78	26	25.0
IV	548	515	33	6.0
V	323	285	38	11.8
VI	430	407	23	5.3
VII	196	120	16	8.0
VIII	60	37	23	38.3
IX	77	56	21	27.3
X	43	25	18	41.9
Total	1,976	1,735	241	12.2[*]

[*] This figure represents an average of those LHAs not making PILOTs.

HUD offers no verifiable explanation for why 241 local housing authorities fail to pay PILOTs to local governments. The following are possible explanations:

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[24] *HUD PILOT Study*, *supra* note 12, at 76.
[25] *Id.* 79.

(1) In order to reduce operating expenditures and, therefore, reduce rents, local housing authorities have, in the past, requested and received waivers of PILOT from the local governing bodies.

(2) A waiver of PILOT may be requested from a local governing body in order to make a new public housing project financially feasible.

(3) A waiver of PILOT may be secured from a local governing body as a means of reimbursing the local housing authority (or HUD) for off-site utilities (e.g., access roads or water lines) constructed as part of the development of a project, although such utilities are actually an obligation of the local government.

(4) A local governing body may postpone payment or waive PILOTs in cases where a local housing authority is experiencing financial difficulty. For example, the housing authority in San Antonio, Texas, has been unable to pay PILOTs since 1973. In 1976, the San Antonio City Council adopted a resolution waiving the payment obligation until the Authority regains the financial capability to pay.

(5) A local housing authority may withhold PILOT when a local governing body does not fulfill its obligations under the Cooperation Agreement.

Tax Estimates Made by Local Housing Authorities and Foregone Taxes. One of the annual reporting requirements of local housing authorities to HUD includes Computations of Payments in Lieu of Taxes as specified in the Form HUD-52267. One of the 16 items of information sought in this report is the approximate full real property taxes on the low-income housing projects within the local housing authority's jurisdiction. Although it is not compulsory, HUD claims that most of the local housing authorities do provide an estimated full tax figure as specified in this reporting form.

HUD does not provide guidelines on the method of estimating full taxes. Therefore, the comparability and reliability of these estimates are questionable. However, this is the only known source of full tax estimate data on public housing property. Data for 1976 has been assembled from reports from a sample of 120 local housing authorities.

Based on this data, HUD prepared the table below as follows: first, the average tax per dwelling unit was calculated for each housing authority for which such data is available; second, the weighted average tax per dwelling unit was calculated for all housing units for each of the ten HUD regions; third, the weighted average tax per dwelling unit for all housing units was calculated for the entire national sample. To estimate the total property taxes for public housing units in each HUD region and in the entire country, the average taxes per dwelling unit were multiplied by the regional total and the national total number of public housing units. The results of these calculations in the table below show that $438 billion in property tax revenues were foregone on tax-exempt public housing.

ESTIMATED FOREGONE PROPERTY TAX FOR PUBLIC HOUSING BY REGION AND FOR THE NATION--1976 26/

Region	Foregone Tax/Dwelling Unit ($)	No. of Dwelling Units	Total Estimated Tax ($)
I	889.30	45,927	40,829,103
II	855.41	150,156	128,383,380
III	238.57	97,078	23,104,564
IV	165.63	209,885	34,631,025
V	555.72	170,576	94,669,680
VI	175.16	97,214	17,012,450
VII	55.34	25,607	1,408,385
VIII	750.00	11,853	8,889,750
IX	258.97	31,818	8,209,044
X	145.07	18,244	2,645,380
National	419.15*/	1,045,000**/	438,011,750

*/ This figure represents a national average of the foregone tax per dwelling unit.

**/ This figure does not represent the sum of the ten HUD regions because of incomplete regional tabulation.

The property tax estimates made by local housing authorities reveal large variations among the regions, ranging from $889 per dwelling unit in Region I to only $55 in Region VII; total full tax estimates for the regions range from $128 million in Region II to $1.4 million in Region VII; the national total amounts to $4.38 billion. Consequently, HUD estimates that if full taxes were paid on public housing, the full tax payments, as estimated by local housing authorities, would require approximately $4 billion of additional current operating expenditures for public housing.

There are other methods for estimating the property tax for public housing. However, they, along with the estimates provided by the local housing authorities, are all speculative. The speculative nature of estimating foregone taxes is discussed in Chapter Five of the 1979 HUD PILOT Study, in which several techniques for making these estimates are also described. Calculations using these techniques have resulted in a range from $72 per unit to $500 per unit per year in foregone taxes. HUD further explains that the actual tax loss depends on several criteria, such as the circumstances of each property and its potential use for other purposes.

26/ *Id.* 60.

Incentives for Local Acceptance of Low-Income Public Housing. Under title I of the Housing and Community Development Act of 1974, Federal funds are provided annually to certain units of local government--usually the local housing authorities--to assist in their community development activities. The Community Development Block Grant program, authorized by the Act, supercedes and consolidates a number of previous categorical programs into a single program under which Federal aid is provided on an annual basis, with maximum certainty and minimum delay, providing an improved basis for community planning. The first year for which funds were appropriated for this new program was fiscal year 1975.

Under the Community Development Block Grant program, the amount of funds major cities and many large urban counties are entitled to receive is allocated on the basis of an "objective needs formula." That formula employs five demographic characteristics--population, extent of poverty, degree of overcrowded housing, growth lag, and age of housing. Communities desiring to receive Community Development Block Grant funds must prepare a Housing Assistance Plan using these criteria to assess needs and set goals for meeting those needs. Under the Housing Assistance Plan, communitites have three years to make substantial progress in meeting their goals. HUD provides a mix of Section 8 and public housing funds that communities can apply for in order to provide housing. If sufficient funds are available during the three-year period to achieve locally established goals, yet the community fails to meet these goals, the Department can condition or actually withhold Community Development Block Grant funds for the development of public housing in a community. This is an example of how communities are encouraged by one Federal program to adopt another, and it counters arguments that federally-subsidized housing is strictly local in nature.

ATTACHMENT I

HOUSING

LOW INCOME HOUSING

SUMMARY OF ANNUAL CONTRIBUTIONS FROM INCEPTION THROUGH SEPT. 30, 1981 a/

FISCAL YEAR	NUMBER OF UNITS	ANNUAL CONTRIBUTIONS	FUNDS AVAILABLE TO REDUCE ANNUAL CONTRIBUTIONS b/	NET ANNUAL CONTRIBUTIONS	NET AMOUNT AS PERCENT OF ANNUAL CONTRIBUTIONS	ADDITIONAL SUBSIDIES FOR OPERATIONS	GRAND TOTAL NET ACCRUED CONTRIBUTIONS	AVERAGE NET ANNUAL CONTRIBUTIONS PER UNIT c/
1941	23,783	$4,747,176		$4,747,176	100.0		$4,747,176	$200
1942	68,459	11,258,951	$1,333,060	9,925,891	88.2		9,925,891	145
1943	89,240	13,049,252	3,166,370	9,882,832	75.7		9,882,882	111
1944	101,951	14,436,885	4,306,888	10,129,997	70.2		10,129,997	99
1945	141,596	21,132,572	12,410,272	8,722,300	41.3		8,722,300	62
1946	144,095	21,115,314	13,978,579	7,136,735	33.8		7,136,735	50
1947	144,095	21,044,261	15,377,631	5,666,630	26.9		5,666,630	39
1948	144,603	21,044,002	17,103,597	3,940,405	18.7		3,940,405	27
1949	145,785	21,325,747	17,082,754	4,242,993	19.9		4,242,993	29
1950	146,549	21,321,123	15,105,911	6,215,212	29.2		6,215,212	42
1951	145,703	21,407,822	14,221,701	7,186,121	33.6		7,186,121	49
1952	156,084	26,215,103	13,649,116	12,565,987	47.9		12,565,987	81
1953	204,815	45,091,505	19,212,357	25,879,148	57.4		25,879,148	126
1954	259,116	67,844,328	23,376,836	44,467,492	65.5		44,467,492	172
1955	304,383	91,133,962	24,548,099	66,585,863	73.1		66,585,863	219
1956	343,907	107,933,030	26,202,984	81,730,046	75.7		81,730,046	238
1957	365,926	116,685,509	26,050,696	90,634,813	77.7		90,634,813	248
1958	374,172	121,213,830	22,429,416	98,784,414	81.5		98,784,414	264
1959	401,467	133,106,635	17,739,971	115,366,664	86.7		115,366,664	287
1960	425,850	147,523,103	16,338,787	131,184,316	88.9		131,184,316	308
1961	465,481	166,360,866	21,038,913	145,321,953	87.4		145,321,953	312
1962	482,714	177,688,594	20,710,651	156,977,943	88.3	2,395,813	159,373,756	330
1963	511,047	192,858,982	20,925,771	171,933,211	89.1	4,548,949	176,482,160	345
1964	539,841	211,479,468	25,024,891	186,454,577	88.2	4,441,532	190,896,109	354
1965	577,347	238,260,239	25,586,405	212,673,834	89.3	5,242,325	217,916,159	377
1966	608,554	256,672,714	29,589,402	227,083,312	88.5	4,917,522	232,000,834	381
1967	643,245	282,159,512	28,756,853	253,402,659	89.8	7,638,871 d/	261,041,530	406
1968	692,199	323,805,194	27,732,987	296,072,207	91.4	6,094,947 d/	302,167 154	437
1969	767,723	391,610,980	26,865,055	364,745,925	93.1	14,869,657 d/	379,615,582	494
1970	830,454	464,802,576	23,375,714	441,426,862	95.0	31,463,984 d/	472,890,846	569
1971	892,651	540,548,303	22,194,394	518,353,909	95.9	107,999,999 d/	626,353,908	702
1972	989,419	659,553,333	15,439,235	644,114,098	97.7	245,000,000 d/	889,114,098	899
1973	1,047,000	760,794,757	7,354,202	753,440,555 d/	99.0	348,369,074	1,101,809,629	1,052
1974	1,109,000	923,511,555	10,402,939	913,108,616 d/	98.9	319,995,241	1,233,103,857	1,112
1975	1,151,000	990,729,684	9,683,936	981,045,748 d/	99.0	475,369,927	1,456,415,675	1,265
1976	1,167,000	1,039,240,669	7,005,717	1,032,234,952 d/		374,893,453	1,407,128,405	1,212
Transition Quarter	293,000	256,122,218	1,179,509 e/	254,942,709 d/	99.5	235,839,784	490,782,493	1,675
1977	1,174,000	1,078,024,316	4,952,066 e/	1,073,072,250 d/	99.5	592,290,951	1,665,363,201	1,419
1978	1,173,000	1,137,589,662	4,900,580 e/	1,132,689,082 d/	99.6	661,576,685	1,794,265,767	1,530
1979	1,178,000	1,222,237,718	4,534,313 e/	1,217,703,405 d/	99.6	726,228,451	1,943,931,856	1,650
Subtotal		12,362,681,450	640,888,558	11,721,792,892		4,169,177,165	15,890,970,057	
1980 f/	1,192,000	1,326,000,000	5,000,000 e/	1,321,000,000 d/	99.6	741,500,000	2,062,500,000	1,730
1981 f/	1,217,000	1,461,000,000	5,000,000 e/	1,456,000,000 d/	99.6	862,000,000	2,318,000,000	1,905
Total		15,149,681,450	650,888,558	14,498,792,892		5,772,677,165	20,271,470,057	

NOTE: Annual Contributions include debt service contributions for PHA-owned housing and includes basic annual contributions for PHA-leased housing starting in 1966.

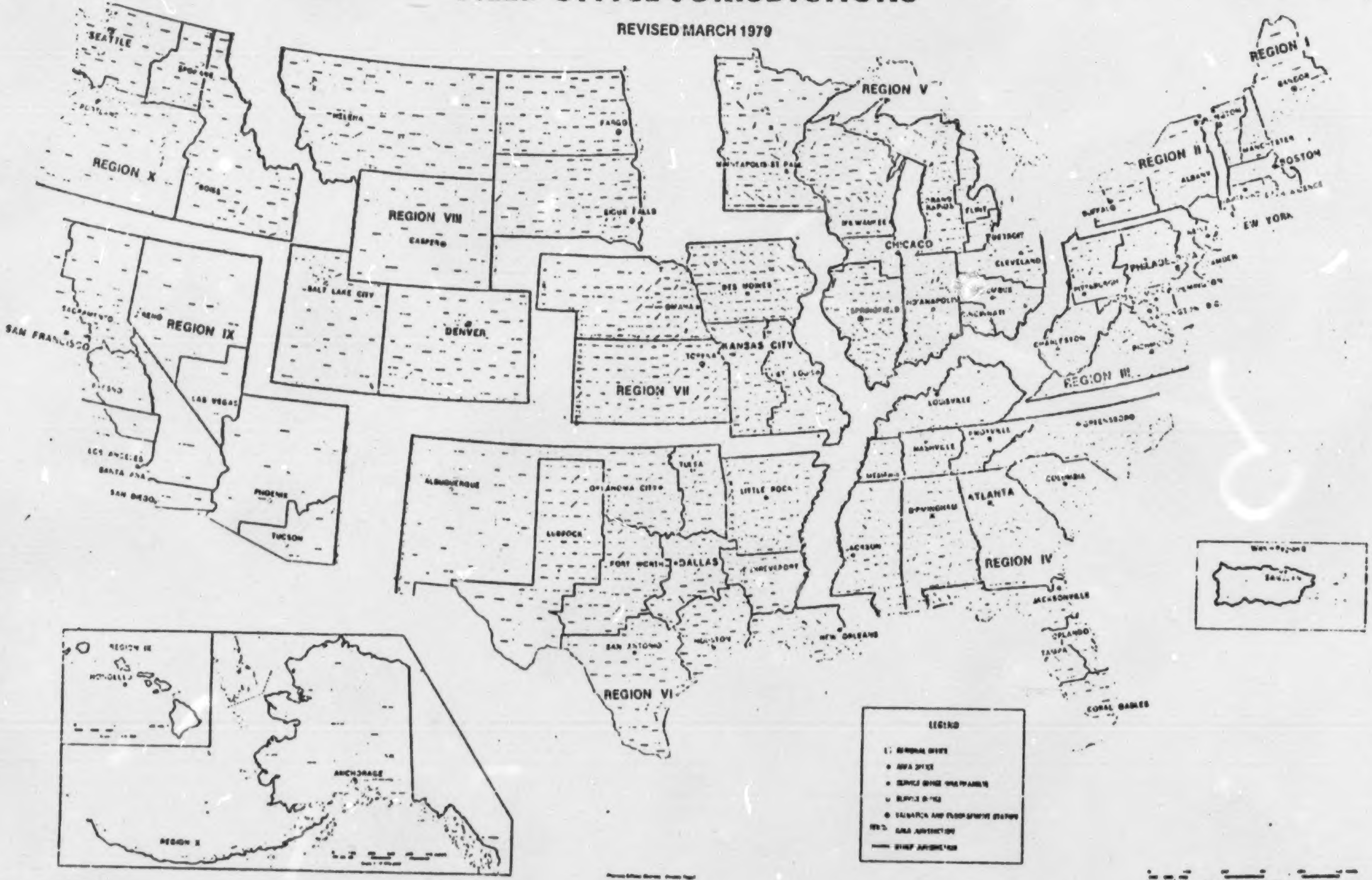
a/ Reflects obligations reported at end of each fiscal year.
b/ Includes Modernization starting in FY 1970.
c/ Cumulative basis.
d/ Includes PHA-leased housing annual operating adjustments (subsidies).
e/ Recorded as receivable rather than as reduction to Annual Contributions.
f/ Estimated.

Housing Budget Division
4/8/80

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FIELD OFFICE JURISDICTIONS

REVISED MARCH 1979


SEATTLE
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PORTLAND
REGION X
BOISE
HELENA
REGION VIII
CASPER
FARGO
SIOUX FALLS
SALT LAKE CITY
DENVER
SACRAMENTO
SAN FRANCISCO
RENO
REGION IX
FRESNO
LAS VEGAS
LOS ANGELES
SANTA ANA
SAN DIEGO
PHOENIX
TUCSON
ALBUQUERQUE
OMAHA
DES MOINES
TOPEKA
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ST. LOUIS
REGION VII
MINNEAPOLIS-ST. PAUL
MILWAUKEE
REGION V
GRAND RAPIDS
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DETROIT
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LOUISVILLE
OKLAHOMA CITY
TULSA
LITTLE ROCK
LUBBOCK
FORT WORTH
DALLAS
SHREVEPORT
SAN ANTONIO
HOUSTON
NEW ORLEANS
REGION VI
MEMPHIS
NASHVILLE
KNOXVILLE
JACKSON
BIRMINGHAM
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GREENSBORO
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JACKSONVILLE
ORLANDO
TAMPA
CORAL GABLES
REGION I
BANGOR
MANCHESTER
BOSTON
PROVIDENCE
REGION II
ALBANY
BUFFALO
NEW YORK
CAMDEN
PHILADELPHIA
PITTSBURGH
WASHINGTON D.C.
RICHMOND
CHARLESTON
REGION III
SAN JUAN
REGION IX
HONOLULU
ANCHORAGE
REGION X
LEGEND

ATTACHMENT II

APP L-17

APPENDIX M

EXCERPTS: IMPACT AID TWO YEARS LATER: AN ASSESSMENT OF THE PROGRAM AS MODIFIED BY THE 1974 EDUCATION AMENDMENTS

Are Impact Aid Funds Equitably Distributed in Terms of District Needs and Federal Impact?

A longstanding criticism of the Impact Aid program is that is distributes large amounts of money to affluent districts--

districts that could easily support a high level of educational expenditure without Federal assistance. A related criticism concerns the appropriateness and wisdom of distributing scarce Federal dollars to lightly impacted districts. The following discussion will explore both of these issues.

Impact Aid and District Wealth[1]

Many have argued that the Impact Aid program is inequitable because it distributes funds to affluent districts that could easily support a high level of educational expenditures without Federal assistance. Indeed, critics have contended that some districts are wealthy, in part, because they are benefited, not burdened, by Federal activities. Others merely observe that eliminating or reducing these payments would hardly be felt by wealthy districts because Impact Aid amounts per pupil are small and could easily be absorbed locally through modest tax increases. These persons note that eliminating or reducing such aid would free-up a substantial portion of the total SAFA appropriation for use by less wealthy districts. Alternatively, these monies could be spent for other more important educational purposes.

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[1] Throughout this analysis "affluent" and "wealthy" are used synonymously with property wealth per pupil above the State average. Although parallel analyses were conducted using various measures of income wealth, the property wealth measure was deemed more appropriate in the context of the Impact Aid program.

Evidence bearing on the validity of these criticisms is provided below in Table 6. The table shows that in 1976 there was some substance to these allegations for, although the distribution of total SAFA payments per pupil was somewhat progressive across districts classified by property wealth, a significant share of aggregate program dollars went to a large number of districts which, in their own States, would have been considered relatively well-off. Thus, even though the poorest districts received about twice what the least poor districts received in total SAFA dollars per pupil, about 20 percent of all SAFA dollars went to high property wealth districts.1/

Closer inspection of Table 6 shows that there are major differences between the way "A" and "B" category payments affect total funding in wealthy and poor districts. Specifically, although both types of payments tend to be inversely distributed across districts ranked by property wealth, most wealthy districts receive the bulk of their funds for "B" category children while poor districts receive their funds because they have large concentrations of high burden "A" category children.

1/ A similar but more pronounced pattern emerges for districts ranked by median family income. Fully 42 percent of all SAFA monies accounted for by our sample were targeted on districts in the highest quartile of median family income.

Table 6. Payments to SAFA Districts Classified by Property Wealth -- 1976 (Through Tier 2)[a/]

Property Per Pupil (ADA) [c/][d/][e/]	Total SAFA/ Pupil[b/][c/] (1)	SAFA "A"/ Pupil[c/] (2)	SAFA "B"/ Pupil[c/] (3)	% SAFA Dollars[c/] (4)	SAFA $ Millions[c/] (5)	# of Districts (6)
National Average (Total)..........	$ 23.96	$ 8.06	$ 12.33	100.00	$ 519.2	3,374
	....(U.S. Average=1.00)............					
Poorest.............	1.6	2.4	1.2	36.9	$ 191.4	999
Quartile 2..........	0.9	0.8	1.0	24.8	128.7	880
Quartile 3..........	0.9	0.6	0.9	19.1	99.4	770
Least Poor..........	0.7	0.4	0.8	19.2	99.8	725

a/ Not included in FY 1976 SAFA payments are amounts distributed under Section 2: money paid to other Federal agencies under Section 6; amounts paid out for major and pinpoint disaster assistance under Section 7; and any payments made at Tier 3 levels. Total SAFA includes hold harmless amounts. These amounts are excluded from SAFA "A" and "B" totals.

b/ SAFA per pupil amounts on this and subsequent tables are calculated based on total ADA rather than only Federal ADA. Total ADA was used because most Impact Aid is general assistance and is used for all students.

c/ Details for property wealth will not add to U.S. totals because these distributions are based on different subsets of SAFA districts. Subsets consist of those districts on the SAFA program data file which could be matched with districts on other files containing property data. Note that percentage distributions in Column (4) are based on SAFA dollars distributed to the matched districts.

d/ Districts are assigned to quartiles based on their within-State rankings. SAFA districts are ranked with non-SAFA districts in this process.

e/ SAFA data are for 1976. Property data are for 1974-1975.

SOURCE: 1976 SAFA Program Data File Matched with 1974-1975 Equalized Property Value Data.

These data substantiate claims that large amounts of Impact Aid are targeted on the wealthy, but do not indicate whether wealthy districts could absorb the loss of these payments through relatively modest increases in tax and other revenues. Information bearing on this claim is provided in Table 7 which shows how much local (and also State plus local) revenues would have to be raised by districts in different wealth quartiles in order for them to fully offset a total loss in their Impact Aid payments. The table shows that, in the aggregate, districts in the highest quartile of property wealth could offset such losses by increasing local revenues by about 1.7 percent. State plus local revenues would have to be raised by only 1 percent.

Table 7. SAFA Payments to Districts Classified by Property Wealth: SAFA as a Percent of Local and State Plus Local Revenues -- 1976 (SAFA Through Tier 2)

Property Wealth Per Pupil (ADA)	Number of Districts in Sample (1)	SAFA $ As a Percent of Local Revenues (2)	SAFA $ As a Percent of State + Local Revenues (3)
Total.............	2,039	2.9	1.6
Poorest..........	588	6.1	2.8
Quartile 2.......	537	3.0	1.6
Quartile 3.......	472	2.4	1.5
Least Poor.......	442	1.7	1.0

SOURCE: 1976 SAFA Program Data File Matched With 1974-1975 ELSEGIS and 1974-1975 Equalized Property Data.

Although these aggregate data do not indicate the effects of aid reductions for individual districts, they do provide at least partial evidence to support the complaints of Impact Aid critics. Substantial amounts of money are being channeled to wealthy districts in relatively small per pupil amounts -- amounts which apparently could be reduced or eliminated without causing much difficulty for the districts involved. It is also clear that many of these funds result from entitlements for the least burdensome "B" children, while the most needy districts receive their Impact Aid assistance because they are truly burdened by large proportions of "A" children.

It would be tempting to use these data to support the argument that wealthy districts are being unfairly overcompensated by the program. Given the limited resources that are available, one could conclude that it makes little sense to continue payments that make wealthy districts wealthier. On the other hand, many wealthy districts could argue quite forcefully that it is inappropriate to consider their relatively favorable economic positions in compensating for Federal impact. They might contend, for example, that they would be even wealthier without the presence of the Federal government and that it is unfair for the Federal sector to create even the smallest burden without providing offsetting compensation. Own view lies somewhere in-between -- wealthy districts may be correct when they argue that it is unfair to discriminate against them because they are wealthy, but are on less firm ground when they argue that the Federal government has a responsibility to compensate for even the smallest burden.

Impact Aid and Federal Burden

A related criticism of the program concerns the fact that a significant fraction of all Impact Aid districts are lightly impacted, containing fewer than 10 percent Federally connected children. For example, Table 8 shows that in 1976, 60 percent of all Impact Aid districts were lightly impacted by this definition. The table also shows that even though these lightly impacted districts received very small per pupil grants (grants that averaged about $13 or less per pupil) in the aggregate they accounted for a substantial 20 percent of all Impact Aid dollars (about $122 million). As can be seen, most of these funds were received for "B" category children. In contrast, most of the funds received by heavily impacted districts resulted because of their disproportionately large share of high burden "A" children.

As we have noted, many would argue that these payments to lightly impacted districts are entirely appropriate. They would note that degree of impact has nothing to do with the Federal government's moral responsibility to compensate for the burden it causes. They would suggest that any attempt to reform the present program by reducing or eliminating these payments would be improper because it would constitute

Table 8. Payments to SAFA Districts by Percent SAFA Children -- 1976 (Through Tier 2) a/

District Characteristic	Total SAFA/ Pupil (1)	SAFA "A"/ Pupil (2)	SAFA "B"/ Pupil (3)	% SAFA Dollars (4)	SAFA $ (Millions) (5)	# of Districts (6)
National Average (Total)	$ 26.39	$ 10.35	$ 12.92	100.0	$ 610.7	4,221
	.......U.S. Average=(1.00)...					
Percent SAFA Children						
75 - 100	27.7	67.3	2.0	12.6	$ 76.8	99
50 - 74	9.5	17.8	3.9	9.0	55.0	108
25 - 49	3.5	4.0	3.2	24.3	148.6	407
15 - 24	1.7	1.1	2.0	18.3	111.7	480
10 - 14	0.9	0.4	1.3	15.9	96.9	567
5 - 9	0.5	0.2	0.7	11.8	69.0	1,247
Less than 5	0.2	0.05	0.3	8.6	52.6	1,313

a/ Not included in FY 1976 SAFA payments are amounts distributed under Section 2; money paid to other Federal agencies under Section 6; amounts paid out for major and pinpoint disaster assistance under Section 7; and any payments made at Tier 3 levels. Total SAFA includes hold harmless amounts. These amounts are excluded from SAFA "A" and "B" totals.

SOURCE: 1976 SAFA Program Data File

an abdication of the government's responsibility to pay a share of the cost of educating all Federal children.

Others may well find this line of argument difficult to accept. Given that priorities must be set on Federal resource expenditures, they will question whether it is sensible or wise for an Impact Aid program to compensate districts that are not very heavily impacted. They will note that distributing money in such small per pupil amounts to districts that are so lightly impacted diverts support away from districts that have a more legitimate claim on the program.

We think these latter arguments have particular merit. Lightly impacted districts should represent a relatively low Federal priority. The case for this position is compelling, especially when one considers the consistent pattern of differences between high and low impact districts.

For example, Table 9 compares Impact Aid payments to local (and State plus local) revenues in districts classified by percent Federal enrollment. The table shows that Impact Aid payments to districts with low percentages of Federal children are small when compared with other revenues. Thus, in districts where Federal children constitute less than five percent of total enrollment, complete elimination of Impact Aid would require offsetting increases in local revenues of about one-half of one percent. By comparison, eliminating Impact Aid payments in the most heavily impacted category of districts would require offsetting local revenue increases of over 150 percent. Clearly, these data indicate that lightly impacted districts are much less dependent on Impact Aid funds than heavily impacted ones, and could adjust to the elimination or reduction of these payments without suffering any undue hardships.

Table 9. SAFA Payments to Districts Classified by Percent Federal Children: SAFA as a Percent of Local and State Plus Local Revenues -- 1976 (through Tier 2)

Percent SAFA Children (ADA)	Number of Districts in Sample (1)	SAFA $ as a Percent of Local Revenues (2)	SAFA $ as a Percent of State + Local Revenues (3)
Total	2,174	3.1	1.7
75 - 100	20	153.8	56.3
50 - 74	37	61.7	23.3
25 - 49	186	19.8	7.9
15 - 24	203	5.9	3.1
10 - 14	263	3.1	1.6
5 - 9	639	1.5	0.9
Less Than 5	826	0.7	0.4

SOURCE: 1976 SAFA Program Data File Matched with 1974-1975 ELSEGIS Data.

Finally, Table 10 provides additional information about the needs of different types of Impact Aid districts. The table shows property wealth for districts in each impact category relative to these districts' State averages. For example, the table indicates that districts in the highest impact category have only about 55 percent of the average property wealth for all districts in their respective States. A quick perusal of the information presented indicates that Impact Aid districts have about average wealth overall, but that heavily impacted districts show real evidence of burden from loss of property due to Federal activity. On the other hand, lightly impacted districts are generally at or above average in terms of property wealth. Once more, lightly impacted districts do not seem to have been very heavily burdened as a result of Federal activity. Given these data, one might reasonably conclude that, if Federal funding priorities must be set, heavily impacted districts whose burdens are relatively unambiguous, are much more deserving of compensation than lightly impacted ones whose burdens are less apparent.

HISTORY OF THE FEDERAL OBLIGATION TOWARD THE EDUCATION OF FEDERAL CIVILIAN AND MILITARY DEPENDENTS

Legislative history of the original Impact Aid law reveals that the Congress found the laws of the States and their subdivisions have, through reliance on real property taxes, placed upon the owners and users of real property an obligation for the financial support of public education. With few exceptions, this obligation is consistent throughout the Nation and applies both to residences and to property used for commercial, industrial, and other private purposes. The Federal Government, as an employer, has recognized an obligation for the education of the children of its employees for many years. However, as an owner of tax-exempt real property, the Federal Government had not, before 1950, accepted "the responsibility of the normal citizen of a community" for the financial support of public schools. The Impact Aid Program was originally designed as a device for complying with that obligation with respect to real property owned by the United States.[1]

Prior to 1950, the Federal Government had no established comprehensive policy for educating dependents of its employees. Instead, various Federal agencies made ad hoc attempts to educate their employees' children. In some cases, an agency provided opportunities for education at public expense for all children living on specific properties. In other cases, children residing on federally-owned property were required to pay tuition to local educational agencies. In still other cases, States and localities permitted federally-connected children to attend local public schools. However, there were also cases in which federally-connected children were afforded no opportunity to attend public school at all.[2]

History--Prior to 1940

The United States Constitution[3] gives the Federal Government the right "to exercise exclusive jurisdiction" over all property purchased by the Federal Government for military purposes. Therefore, when the Federal Government exercises exclusive jurisdiction, local communities are relieved of responsibility for providing public services, including education, to the residents of the ceded or purchased lands.[4]

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[1] H.R. Rep. No. 2287, 81st. Cong., 2d Sess. 1, 11 (1950).

[2] Legislative Reference Service, Library of Congress, Education of Children Living on Federal Reservations and in Localities Particularly Affected by Federal Activities, Senate Committee on Appropriations, 81st Cong., 1st Sess. 2 (Comm. Print 1949) [hereinafter cited as 1949 Comm. Print].

[3] U.S. Const., art. I, §8, cl. 17.

[4] Catherine Ehrmantraut Martini, A Study of the Effect of Federal Government Installations on School Facilities in Selected Areas 8 (1948) (unpublished M.A. thesis in American University Library) [hereinafter cited as Martini].

The War Department was the first Federal department to recognize the need for public schools for its employees and to apprise the Congress of that need.[5] In 1821 the Congress enacted into law regulations providing for a system of public schools for military dependents, which were commonly known as post schools.[6] These regulations, compiled by Major General Winfield Scott, provided for financing and administering civil activities including education for children[7] and remained, with minor changes, in effect for the next 100 years.

In 1922, direct appropriations for military post schools were discontinued. The only educational facilities for military dependents directly supported by Federal funds (within the United States) from 1922 until the National Defense Program of 1941 were those facilities for West Point personnel and a small number of Navy-financed schools, which were initiated in 1917.[8]

It is worthy to note, however, that during this interval one State set legal precedent in addressing the responsibility of educating military dependents. In 1841, the Supreme Court of Massachusetts ruled that State and local governments are not responsible for educating children living on reservations under the sole jurisdiction of the Federal Government. The Court said that persons who reside on lands purchased by or ceded to the Federal Government for military purposes were not entitled to educational benefits of the "common schools" in the locality where the military establishment was located. At the same time, however, those persons were guaranteed exemption from taxes.[9]

In 1931, the National Advisory Committee on Education was organized to review the activities and policies of the Federal Government concerning the education of children on Federal reservations. The Committee study revealed that the Federal Government lacked a comprehensive policy. Elaborating on their findings, the Committee stated that nearly every department of the Federal Government managed schools for training its own personnel under its own departmental jurisdiction. Different departments performed similar services and there was considerable overlapping; there was little, if any, cooperation or coordination of efforts. The Committee concluded that consolidation of administrative authority over educational activities serving the same purpose was preferable. The Committee recommended the establishment of an Interdepartmental Council on Education to coordinate the policies and procedures of the disparate Federal education activities and the establishment of a Department of Education with a Secretary in the President's Cabinet.[10] The Committee also recommended that the Federal Government assume direct responsibility for the education of children living on Federal reserve areas, districts, or reservations, providing educational facilities at approximately the standards maintained generally by the States.[11]

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[5] Lloyd E. Blauch & William L. Iverson, Education of Children on Federal Reservations, Staff Study No. 17, The Advisory Committee on Education 19 (1939) [hereinafter cited as Blauch].

[6] Act of March 2, 1821, 35 Stat. 616.

[7] Blauch, supra note 5, at 20-22.
1949 Comm. Print, supra note 2, at 6-7.

[8] Martini, supra note 4, at Preface.

[9] Id. 8.
1949 Comm. Print, supra note 2, at 3.

Thereafter, during the 1930's, Federal agencies, including the Tennessee Valley Authority, the Veterans' Administration, the Army Corps of Engineers, and the Departments of Commerce, Interior, and Justice, provided directly or indirectly for the education of their employees' dependents. Recognizing "the direct relationship between recruitment of personnel and the availability of public school facilities...," the administrators of the Federal Bureau of Reclamation made specific provisions in their contractual bids for construction work "to assure educational arrangements for [dependents of] their employees...."[12]

Expansion of Federal activities during this period brought into the bureacracy many people with school-age children; the number of civilian employees rose from 600,000 in 1933 to more than a million in 1940. Many of these employees were assigned to work or to live on tax-exempt property. At the same time, depression conditions had caused a reduction in local tax revenues and many local educational agencies faced financial difficulties.[13]

In 1937, nearly 21,000 school-age children were reported associated with 620 reservations and projects in the 48 States. Army posts and naval stations were the homes of 71 percent of the children; some 15 percent were at reclamation projects; and nearly five percent were at treatment facilities. The others were at lighthouse stations; navigation, flood control, and power projects; national parks; prisons; fish hatcheries; and soil conservation projects on public lands.[14]

Concerned with the educational problems of these federally-connected children, President Roosevelt appointed the Advisory Committee on Education in 1937. The Committee made the following recommendations

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10/ 1949 Comm. Print, *supra* note 2, at 15-16.

11/ *Martini*, *supra* note 2, at 15-16.

12/ *Id.* 24.

13/ David S. Hill & William A. Fisher, *Federal Relations to Education: Report to the National Advisory Committee on Education* 41-44, 261-269 (1931).

14/ *Blauch*, *supra* note 5, at 171-173, 217-218.

concerning the education of children of Federal employees residing on Government reservations:

> 1. The Congress should establish a permanent policy by which all children of Federal employees residing on a Federal reservation or at a foreign station will be assured the right to an education. Sufficient funds should be appropriated to obtain or provide for those children school facilities free from tuitional costs to the individual and comparable in quality, so far as possible, to the public schools maintained by the States.
>
> 2. Since it will be necessary to vest some administrative agency with considerable discretion as to the procedures to be followed in providing or obtaining the use of suitable facilities, the appropriations (other than those for the Panama Canal Zone) should be made in a lump sum to the United States Office of Education.***
>
> 3. Wherever it is at all possible, public schools should be used for the education of children residing on Federal reservations, even if the extensive use of transportation is required. In other cases, it may be possible to make suitable arrangements with adjacent school jurisdictions for the operation of schools on the reservations. In a few cases, a federally-operated school or school services of some kind will probably be necessary. In those cases, the Office of Education should allocate funds to the Federal agency or agencies having control over the respective reservations, and the responsible Federal officials should maintain the schools under the general supervision of the Office of Education.
>
> 4. The Office of Education should be authorized to establish general policies and the necessary regulations for administering the funds. It should be required, however, to consult with an advisory committee made up of representatives from the several departments and agencies in which need exists for school facilities for the children of employees.[15]

In sum, prior to the National Defense Program, Federal funds were provided for educational purposes in connection with Federal property, either directly or indirectly, in the following ways:

- Direct appropriation for maintenance and operation of "on station" schools--one Army (West Point) and three Navy;

- Direct appropriation to Federal agencies--e.g., Farm Security

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[15] 1949 Comm. Print, supra note 2, at 17.

Administration and Federal Bureau of Reclamation--for construction of school facilities;

- Income from Federal property, e.g., in connection with oil and mineral leasing and grazing lands; and

- Payments in-lieu of taxes, e.g., on slum clearance and low-rent housing projects.[16]

The National Defense Program

The National Defense Program, initiated in 1940, was a complex and inadequate method of assuring that educational facilities would be available to the millions of people that were recruited and settled in isolated areas in connection with expansion of Federal activities.[17]

New spurts of Federal employment expansion followed the outbreak of war in Europe in 1939 and the initiation of major military and land-lease programs in 1940. Army contracts and military establishments attracted new residents to many communities. At the same time Federal activities were increasing the school-age population in many communities, acquisition of property by the Federal Government for defense purposes took portions of the tax base from many local educational agencies.[18]

Thousands of workers and their families moved to defense production centers and expanding military installations in the late 1930's. Through the Lanham Act, approved October 14, 1940, Congress provided for construction of federally-owned "war housing" in these overcrowded defense areas. The Congress did not, however, provide for educational facilities for the dependents of the employees residing in war housing, leaving this responsibility to local educational agencies. The Lanham Act states that Federal ownership of war housing is not exclusive;[19] States, therefore, exercised concurrent jurisdiction over the properties purchased by the Federal Government for defense housing purposes. Consequently, residents were entitled to benefit from the public school system.[20]

In the Lanham Act, Congress also recognized the financial burden that would be imposed locally through the construction of housing and provided for payments in-lieu of taxes. The Congress noted that while individual residents would be subject to State and local taxes, Federal ownership of real property would prevent the imposition of ad valorem taxes against the land and housing.[21]

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[16] Martini, supra note 4, at 26-27.

[17] I.M. Labovitz, Aid for Federally Affected Public Schools 15 (1963).

[18] Id. 13.

[19] Lanham Act, Pub. L. No. 76-849, 76th Cong., 3d Sess., §§1-14, 54 Stat. 1125-1128 (1940) [covering October 14, 1940 through June 30, 1941] (amended by Lanham Act, Title I, Pub. L. No. 77-409, 77th Cong., 2d Sess. §§1-9, 56 Stat. 11-12 (1942)).

[20] Johnson v. Morrill, 126 P.2d 873 (1942).
State v. Cocoran, 128 P.2d 999 (1942).

In 1941, the Congress amended the Lanham Act to authorize the Federal Works Administration to "make loans, or grants, or both" to maintain and operate school facilities in federally-affected areas for the next five years. The basis for this provision was to aid the war effort.[22]

The Lanham Act as originally enacted was intended to address housing problems caused by wartime activities. In 1946, after the war, however, the Congress again amended the Lanham Act to authorize Federal aid for one more year in order to assist educational facilities and communities during the transition to peacetime.[23]

The following table shows audited allotments for maintenance and operation of schools under the Lanham Act, by school year and by source of funds.[24]

School Year	Number of Projects	Allotments for Schools		
		Total	Local Funds	Lanham Act Funds
1941-42	310	$ 2,937,444	*	$ 2,937,444
1942-43	407	$41,130,004	$36,351,045	$ 4,778,959
1943-44	385	$54,417,170	$44,590,301	$ 9,826,869
1944-45	408	$79,843,960	$66,912,635	$12,931,325
1945-46	361	$87,853,800	$74,715,086	$13,138,732

* Local funds not reported regularly this year.

In the early years following the war, the Federal Works Administration and the Departments of the Army and the Navy recognized the need for continued funding of those schools that had received assistance during the war, some of which received assistance under the Lanham Act. In 1946, the Congress passed legislation authorizing the Army and the Navy to provide assistance to schools affected by Federal activities. The legislation recognized that large numbers of children living on tax-free government reservations constituted a continuing problem for some local educational agencies for which the Federal Government had some responsibility. A study conducted by the U.S. Office of Education in 1947 concurred, resulting in general agreement on a proposal to the Congress which recognized the need for emergency assistance to local educational agencies because of problems growing out of wartime activities and continuing problems resulting from peacetime activities.

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[21] Lanham Act, Pub. L. No. 76-849, 76th Cong., 3d Sess., §9, 54 Stat. 1125-1128 (1940) (amended by Lanham Act, Title I, Pub. L. No. 77-409, 77th Cong., 2d Sess., §8, 56 Stat. 12 (1942)).

[22] Lanham Act, Title II, as amended by Pub. L. No. 77-137, 77th Cong., 1st Sess., §3, 55 Stat. 361-363 (1941) [covering June 28, 1941 through June 30, 1946].

[23] Lanham Act, Title II, as amended by Pub. L. No. 79-452, 79th Cong., 2d Sess., 60 Stat. 314 (1946) [covering June 26, 1946 through June 30, 1947].

[24] *1949 Comm. Print*, *supra* note 2, at 8.

Instead of evolving a long-term plan to assist local educational agencies in educating federally-connected children, as proposed by the U.S. Office of Education, the Congress merely authorized appropriations in 1947, under the Landis Act, to the "Federal Works Agency to continue for one more year assistance to those schools that had received Federal assistance the preceding year and were still in need."[25] In 1948, the Act was amended to continue for another year assistance to those schools that had received help the preceding year and were still in need, and to assist new schools in need because of expansion or reactivation of defense installations or operation of new defense establishments.[26]

Some of the other Federal agencies given congressional authorization to assist local educational agencies in some fashion during the 1940's included: (1) the Public Housing Authority, authorized to make payments in-lieu of taxes for real property under its jurisdiction (Public Law 849, 76th Congress); (2) the Atomic Energy Commission, given broad authority to construct, maintain, and operate schools on its reservations and in communities adjacent to its reservations (Public Law 585, 79th Congress); and (3) the Reclamation Bureau, Interior Department, authorized to assist local educational agencies with new plant facilities and maintenance and operation funds, but only during the period of construction (Public Law 835, 80th Congress).[27]

By the late 1940's, at least ten different Federal agencies[28] had been given the --

> authority to provide Federal assistance for some kind of support of local educational authorities affected by their activities. This legislation differ[ed] in policy, authority, and detailed provisions from one agency to another and application of the legislation often differ[ed] between branches and bureaus within the same agency. The result [was] that there [was] no uniformity in this program on the Federal level.[29]

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[25] Id. 10.
Landis Act, Pub. L. No. 80-317, 80th Cong., 1st Sess., 61 Stat. 716-717 (1947) [covering August 1, 1947 through June 30, 1948].

[26] Landis Act, Pub. L. No. 80-837, 80th Cong., 2d Sess., 62 Stat. 1110 (1948) [covering June 29, 1948 through June 30, 1949] (amending 61 Stat. 716-717 (1947)).

[27] 1949 Comm. Print, supra note 2, at 12-13.

[28] See Attachment I, infra.

[29] 1949 Comm. Print, supra note 2, at 15.

Comprehensive Policy Proposals

A number of similar bills[30] proposing a comprehensive policy for the education of children residing on Federal properties and in communities overburdened with educational problems as a result of Federal activities were introduced in the Eightieth Congress in 1947. Although these bills were not passed, they are an immediate historical precedent for the Impact Aid law. A summary of their purposes and provisions follows.

The proposals established a comprehensive Federal policy and plan for the education of children on Federal reservations and other federally-owned property on which no tax equivalents are authorized and included among other provisions that:(1) local control shall be strictly maintained; (2) the Commissioner of Education shall arrange for the free public education of all school-age children residing on nonsupporting Federal property by entering into agreements with State and local educational agencies; (3) that the Commissioner may not enter into such an agreement with a local educational agency without approval of the State educational agency; and (4) educational opportunities provided under this proposal shall be equivalent to those provided other children in the State or locality. A method of determining payments was included.

The bills further authorized temporary financial assistance to State and local educational agencies in furnishing free public education to school-age children living in Federal war-housing projects in which payments in-lieu of real property taxes were made but were inadequate for the support of free public education of the children residing thereon. Provisions included that the bills apply with respect to agreements entered into except that the amount of any payment made pursuant to such an agreement should in no case exceed the actual deficit accrued by the State or local educational agency providing the education.

Another provision authorized temporary financial assistance to local educational agencies furnishing free public education to school-age children in local school districts overburdened with war-incurred school enrollments.

All of the proposed bills were to be administered by the Commissioner of Education under the direction and supervision of the Administrator of the Federal Security Agency.[31]

The National Council of Chief State School Officers issued a recommendation on the aforementioned bills, which proposed to provide for the education of children on Federal reservations and other federally-owned property not subject to State or local taxation, and for other purposes. The recommendation read in part:

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[30] The bills introduced in the Eightieth Congress relating to the education of federally-connected children were: S. 1011, H.R. 2650, H.R. 2652, H.R. 2653, H.R. 2669, H.R. 2743, and H.R. 3145.

[31] Id. 18-19.

> From the viewpoint of officials responsible for the administration of State school systems,...[the] proposed legislation...provides the means by which the Federal Government should assume definite financial responsibility for the education of children living on Federal reservations and other federally-owned property.
>
> The bill[s] [are] in keeping with sound education policy. [They are] consistent with fundamental principles which should govern proper Federal-State relationships in education...[and are] free from objectionable Federal controls over State and local school systems. [They meet] long-felt and well-substantiated need. The administration of the act[s] is properly placed in the United States Office of Education.
>
> [The proposed legislation] represents a unified approach to an educational problem of great concern to some 14 Federal agencies and to many States and localities. It would solve [the] problem...[of]...many different policies and separate plans of administration. It seeks to establish a broad, comprehensive policy for discharging the specific obligations which it authorizes the Federal Government to assume.[32]

The Eighty-first Congress saw the introduction of many more bills[33] that authorized payments, through the Federal Works Admnistration, to local educational agencies to provide education for federally-connected children, and prescribed terms and conditions of grants for construction of school facilities, as well as one bill which provided for payments in-lieu of taxes (H.R. 445). Upon consideration of these bills, the House Committee on Education and Labor decided to study the matter prior to authorizing any of the proposed permanent legislation.

The Committee held hearings in Washington, D.C., and conducted field investigations in 23 locations in 16 States, through which they received testimony from approximately 600 witnesses in 42 States as well as supplementing their findings by a statistical study. They found that --

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[32] *Id.* 17-18.

[33] Several of the bills introduced in the Eighty-first Congress were comparable to S. 1011, which was proposed in the Eightieth Congress, to wit: H.R. 2287, H.R. 2422, H.R. 2427, H.R. 2441, H.R. 2577, H.R. 2611, and H.R. 3395. Other bills included: S. 13, S. 834, S. 1085, S. 1243, S. 1263, H.R. 554, H.R. 1972, H.R. 2423, H.R. 2617, H.R. 3230, and H.R. 3487; some of which were identical.

> ...basically, Federal activities place a financial burden on adjacent districts...[because] Federal ownership of property reduces local tax income for school purposes... [and because a] Federal project or activity causes an influx of persons into a community, resulting in an increased number of children to be educated.[34]

A total of 410 local educational agencies, representing approximately two-thirds to three-fourths of the federally-affected districts in the country, were included in the study. While they reported an increase in enrollment of more than 70 percent, "the number of children [who resided] on Federal property and the number whose parents [were] employed on nontaxable Federal property...represent[ed] a several hundred percent increase in the number of school children since the beginning of WWII."[35] The statistical data also demonstrated a comparable increase of approximately 200 percent, or $171 million, in the cost of operating schools in those districts. This is notwithstanding the fact that if the 250 million acres of federally-owned property in those districts were assessed and taxed at the current rates, the property would yield over $193 million per year for operating expenses of schools.

The Committee, therefore, found that "[w]ithout continued Federal help, more than 1.8 million children in these federally-affected areas [would] not receive normal school services."[36]

After full consideration of the findings, recommendations and proposed legislation resulting from the study, the Committee "unanimously reported H.R. 7940" which was later passed by the Congress as Public Law 874.

The House Committee observed, in their report on H.R. 7940, that the "U.S. has become an industrialist, landlord, or a businessman in many communities" by owning and using land within those communities. However, since the land is tax-exempt, the Federal Government has not accepted "the responsibility of the normal citizen in a community" to meet its financial obligation to support public schools under the existing school finance laws of the States.

Consequently, the Congress enacted Public Law 874 as a device for Federal compliance with the obligation of landowners to support public education.

34/ H.R. Rep. 2287, 81st Cong., 2d Sess. 3-4 (1950).
35/ *Id.* 6.
36/ *Id.*

ATTACHMENT I

The following table outlines the estimated funds for the education of children living on Federal reservations and in localities particularly affected by Federal activities prior to the Impact Aid Program.*/

Department or agency and subdivision	Program	Authority	Estimated funds recommended for 1950 (funds in thousands)		
			Total	Construction	Maintenance and operation
National Military Establishment:					
Army	Education of dependents of military and civilian personnel, other than in occupied areas.	Annual appropriation act. Public Law 766, 80th Cong., operation or reimbursement. $120 per pupil.[2]	$1,340	(3)	$1,340
Engineers	Education of dependents of military and civilian personnel under the river and harbor act.	Public Law 525, 79th Cong., sec. 5, construction of facilities and reimbursement for operation and construction.	450	368	82
	Education of dependents of military and civilian personnel on projects under the flood-control act.	Public Law 526, 79th Cong., sec. 6, construction of facilities and reimbursement for operation and construction.	3,200	2,800	400
	Education of dependents of military and civilian personnel at Fort Peck, Mont.	Public Law 590, 80th Cong., reimbursement for maintenance and operating and transportation on average daily attendance basis.	50	32	18
Navy:					
Bureau of Aeronautics	Education of dependents of military and civilian personnel at certain naval air stations.	Public Law 604, 79th Cong., sec. 13, contribution to the support of schools, including transportation.	61	(3)	61
Personnel	Education of dependents of military and civilian personnel at Naval activities outside United States.	do	325	(3)	325
Ordinance	Education of dependents of military and civilian personnel at certain naval ordinance stations.	do	330	(3)	330
Yards and Docks	Education of dependents of military and civilian personnel at certain naval stations.	do	220	(3)	220
Marine Corps	Education of dependents of military and civilian personnel at certain Marine Corps stations.	do	207	(3)	207
Air Force	Education of dependents of military and civilian personnel, other than in occupied areas.	Annual appropriation act. Public Law 766, 80th Cong., operation or reimbursement. $120 per pupil.[2]	795	(3)	795
Atomic Energy Commission	Construction and contractual operation of public schools in the Federal communities including:	Public Law 585, 79th Cong., sec. 12 (a) (5), construct, acquire, provide, or arrange for educational facilities and services.			
	Los Alamos, N. Mex.		1,292	614	678
	Oak Ridge, Tenn.		3,714	995	2,719
	Richland, Wash., and surrounding communities.		2,050	1,225	825
Interior:					
Bureau of Indian Affairs	Education of Indians and construction of educational facilities.	25 U.S.C. 13	13,555	755	12,800
	Education of Navajo and Hopi Indians	25 U. S. C. 13	4,415	2,000	2,415
	Education of natives of Alaska	25 U. S. C. 13	3,156	1,274	1,882
Bureau of Reclamation	Education of dependents of Federal employees on the Boulder Canyon project.	Public Law 528, 80th Cong., sec. 2 (e), reimbursement for cost of instruction; $120 per pupil.	750	750	[4] 0
	Education of dependents of Federal employees	Public Law 835, 80th Cong. Contract to assist in financing operation and expansion of local facilities. Public Law 841, 80th Cong. (Appropriation act) limits payments to average per pupil cost in State; requires employees be charged $50 per year per dependent in attendance.	504	450	54
National Park Service	Education of dependents of Federal employees of Yellowstone National Park.	Public Law 604, 80th Cong., reimbursement from park revenues; cost of instruction and transportation on average daily attendance per pupil basis. Contract for operation, construction, and expansion of local facilities.	10	0	10
Federal Works Agency: Bureau of Community Facilities.	Contributions for maintenance and operation of school districts overburdened with war- or defense-incurred enrollments.	Public Law 839, 80th Cong.[5]	0	0	0
Panama Canal	Education of children, grades 1 to 12, chiefly dependents of employees.	48 U. S. C. 1303	1,363	52	1,311
Tennessee Valley Authority	Education of dependents of employees	16 U. S. C. 831	0	0	0
Total [1]			37,901	11,332	[6] 26,601

[1] Excluding dependents of military and civilian personnel in occupied areas.

[2] $140 per pupil recommended for 1950.

[3] Not available.

[4] Included in funds under Public Law 835, 80th Cong.

[5] No authorization for 1950.

Estimates supplied by the Bureau of the Budget, Mar. 31, 1949.

[6] This total represents maintenance and operation expenditures for an estimated 112,700 children, exclusive of dependents of personnel in occupied areas and exclusive of the Bureau of Community Facilities program. The total of 112,700 children includes an estimated 52,000 children under the programs of the Bureau of Indian Affairs and 5,300 children in the Panama Canal Zone.

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*/ 1949 Comm. Print, *supra* note 2, at 60-61.

SUPPLEMENTAL VIEWS

of

Harold E. Rogers, Jr.

Chairman

Commission on the Review

of the

Federal Impact Aid Program

Harold E. Rogers, Jr., Chairman of the Commission on the Review of the Federal Impact Aid Program, votes in support of the Commission's report on the administration and operation of the Impact Aid Program. He endorses the Commission's conclusion that the Impact Aid Program is a well-warranted program worthy of being continued.

In the Chairman's view, however, two specific elements of the Commission's formula for determining Impact Aid entitlements result in payments which are too generous. That generosity increases the total cost of the Impact Aid Program and diminishes the likelihood that the program will be fully and fairly funded.

Also, the Commission's recommendations do not provide for an absorption of federally-imposed costs by districts wealthy enough to do so without incurring unduly onerous financial consequences. In the Chairman's view, an absorption provision is mandated by the premise that Impact Aid is necessary when federally-imposed financial burdens threaten the integrity of local school districts. Furthermore, an absorption provision would lower the total cost of the Impact Aid Program, which would increase the likelihood that the program would be fully and fairly funded.

Thus the Chairman offers three supplementary suggestions which the ultimate policymakers--the Congress and the President--may rely on in fashioning the Impact Aid Program. These suggestions are not intended to--and in fact do not--take away from the Chairman's support of the substance of the Commission's report. In fact, the supplementary recommendations are offered because the Chairman believes they enhance the potential success of the Commission's recommended program.

Each of the Chairman's suggestions is based on the notion that Impact Aid payments are compensation for federally-imposed financial burdens. As such, the payments should correspond to those burdens. In the Chairman's view, actual costs incurred by a school district approximate that district's financial burden. Thus, the Chairman considers Impact Aid payments should correspond, at least roughly, to a district's actual costs.

It has been argued that there are "hidden" or "additional" costs asociated with federally-connected children. These hidden costs, it is argued, warrant basing Impact Aid payments on an amount which exceeds actual district costs. This reasoning is used to support the Commission's recommendation that Impact Aid payments be determined by reference to an "adequate level of education" standard which is designed to exceed actual local costs in most districts.

If it is considered that Impact Aid need not necessarily reflect actual costs in a district, then the Chairman's suggestions are not appropriate. To those who believe Impact Aid payments should correspond to actual costs, however, the Chairman's suggestions may provide a basis for streamlining the Commission's generous but otherwise well-recommended program.

The Chairman suggests alternative lines of reasoning regarding: (1) the use of the national average per-pupil expenditure, (2) the use of the floor of one-half State per-pupil expenditures below which Federal contribution per child cannot fall, and (3) an absorption provision. A presentation of each of these follows.

Majority Recommendations. The Commission's formula for computing entitlement relies on the following principles, as spelled out in its Report:

> A local educational agency should be compensated on the basis of a consideration of the benefits conferred, and the burden placed, upon it by Federal activities; ... in determining the amount of burden, the following should be taken into consideration:
>
> (a) loss of revenue,
> (b) cost of providing an adequate level of education,
> (c) the fiscal benefit of Federal activities, and
> (d) the obligation a landowner and user has, as such, under school finance laws of the State.[1]

The report continues:

> The basic theory is for the Federal Government to pay an appropriate percentage of the local share of the cost of providing an adequate level of education, as determined under the laws of the States.[2]

The report concludes that a method of "computing local share" which is better than referring to comparable districts is one which:

> determine[s] what the non-local share of the cost is and then deem[s] the remainder to be local...[3]

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[1] Commission on the Review of the Federal Impact Aid Program, Department of Education, A Report on the Administration and Operation of Title II of Public Law 874, Eighty First Congress 366 (1981) [hereinafter cited as Report].

[2] Report, supra note 1, at ____. [The Supplemental Views were written before preparation of the Report in its final form. As a result, some of the passages quoted in the Supplemental Views no longer appear in the text of the Report.

[3] Id.

The Commission's actual recommendations on amount of compensation[4] provide for payment based on the Federal Contribution Rate (FCR). A district would receive one-half FCR for each child residing on Federal property and one-half FCR for each child residing with a parent employed on Federal property. FCR is said to "be equal to the local share per child of the cost of education" in a district.

That "local share of the cost of education," the recommendations continue, is the difference between "the amount determined to be necessary to provide an adequate level of education per child" and general State aid per child.

The amount required to provide an adequate level of education is, in turn, defined as the greater of State or national average per-pupil expenditures. Finally, the recommendations provide that a district's FCR cannot fall below half the average per-pupil expenditure in the district's State.

National Average Per-Pupil Expenditure.[5] The Commission's recommendations provide that the amount necessary to provide an adequate level of education (from which State share is subtracted to obtain local share) is the State or national average per-pupil expenditure, whichever is higher. The Commission states:

> The expenditures in States having average per-pupil expenditures of less than the national average per-pupil expenditure may not be sufficient to provide federally-connected children with an adequate level of education.[6]

This provision is an exception to the general "principle of Federal neutrality regarding the law of States," which requires that "decisions regarding what expenditure is necessary to provide an adequate level of education should be respected and presumption should lie in favor of" a State's actual expenditure.[7] The Commission supports the exception to the general rule with the following argument:

> Wherever a federally-connected child goes to school[,] the Federal obligation follows. If, for Federal purposes, the parents of a child must reside in a school district of a local education agency having low expenditures per child, should the education of that child be hampered by the fiscal capacity of that local educational agency? With this factor in mind, and carrying the Federal neutrality

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[4] Report, supra note 1, at 423-425.

[5] Data used in this section is drawn from Estimates of School Statistics 1978-79, published by the National Education Association.

[6] Report, supra note 1, at ____.

[7] Id.

> concept a little further, a minimum level of expenditures can be set for a determination of adequate level of education: the collective decisions of all the States, so that the national average per-pupil expenditure becomes that minimum.[8]

In the alternative, the Chairman considers that offering the national average per-pupil expenditure option does contradict the notion of Federal neutrality, if Federal neutrality means treating States similarly. In this case, the Commission's recommendations substitute the national average per-pupil figure for low State averages as the amount required to provide an adequate level of education. In so doing, the Federal Government is conferring a benefit on States with low per-pupil expenditures, while failing to confer a similar benefit on States with high per-pupil expenditures.

Another way in which the Commission's formula is not neutral is its regional bias. All the states in the South and the Southwest have per-pupil expenditures below the national average;[9] only three of 11 States in the Northeast have per-pupil expenditures which fall below the national average.[10] Thus, the Commission's recommendations not only violate the concept of Federal neutrality by favoring some States over others; they systematically favor States in the South and Southwest over those in the Northeast.

The most important implication of the national average expenditure option is its costliness. The Chairman cannot ascertain how much of the $1.5 billion required to fund the Commission's recommended program fully is the result of compensating districts as if they spend the national average per pupil, whether they do or not. More data than the Chairman has available to him is required. In lieu of a precise calculation, the following discussion attempts to show that the figure is not trivial.

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[8] Id.

[9] Those States are Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, Arizona, New Mexico, Oklahoma, and Texas.

Other States benefiting from the majority's recommendations because their per-pupil expenditures fall below the national average are: Maine, New Hampshire, Vermont, Indiana, Ohio, Kansas, Missouri, North Dakota, South Dakota, Idaho, Utah, California, Nevada, and Hawaii.

[10] The eight northeastern States with per-pupil expenditures exceeding the national average are: Connecticut, Massachusetts, Rhode Island, Delaware, Maryland, New Jersey, New York, and Pennsylvania. Other States with per-pupil expenditures which exceed the national average are: Illinois, Michigan, Wisconsin, Iowa, Minnesota, Nebraska, Colorado, Montana, Wyoming, Oregon, Washington, Alaska, and the District of Columbia.

About 52 percent of all districts are located in States with an average per-pupil expenditure below the national average per-pupil expenditure. Under the Commission's formula, they would be compensated as if it actually costs them the national average expenditure to educate each federally-connected pupil enrolled in their schools.

In 1977, the national average per-pupil expenditure was $1,755. In that year, the average per-pupil expenditure in States with averages falling below the national average ranged from $1,201 in Arkansas to $1,749 in Nebraska. On the average, federally-affected districts in Arkansas could, using the national average per-pupil expenditure, receive $554 more per "A" child and $277 more per "B" child than they contribute, on the average, to the education of those children from local revenues.

On the average, a district would receive an amount per "A" child in excess of actual local costs equal to the amount by which its State's per-pupil expenditure falls below the national average. By way of estimate, among districts in States with per-pupil expenditures below the national average, any "overcompensation" would be in the following amounts per "A" child: for three States, about $500; for three other States, $400; for ten States, $300; for seven, $200, and for five, $100.

Eliminating the national average alternative would save the Commission's recommended program the following amount: the total number of "A" pupils in each State with per-pupil expenditures below the national average, plus one-half the total number of "B" pupils in those States, multiplied by the difference in each State between average per-pupil expenditure and the national average per-pupil expenditure.

The Chairman needs more data to calculate this figure precisely. It seems apparent, however, that the figure is not trivial. If the national average alternative were eliminated, the percentage of districts entitled to an Impact Aid payment per pupil which, by definition, exceeds actual local costs per pupil would be reduced to 32 percent.

The FCR Floor. The Commission's formula provides that no district's FCR should fall below half the average per-pupil expenditure in the district's State. That provision is based on the following theory:

> The policy in favor of Federal neutrality with respect to State law requires a consideration of the question of increasing State contribution to local educational agencies.

> If the amount a State contributes to a local educational agency increases beyond 50 percent of the cost, the method described above would penalize that local educational agency in that its Impact Aid payments would be reduced--this would discourage State policies in favor of more State aid and be negative rather than neutral.[11]

The Commission concludes that a "minimum Federal contribution rate should be set so that no local educational agency in any State should have a Federal contribution rate of less than 50 percent of the average per-pupil expenditure in that State.[12]

It is arguable that to the extent State aid pays part of per-pupil expenditures in a federally-affected district, the local burden is diminished. In effect, the State shoulders part of the burden by decreasing the share which the local district must contribute. It could be argued that Impact Aid should not duplicate what State aid is already accomplishing. This line of reasoning supports an entitlement formula without a minimum floor so that State contributions are taken into consideration.

The Chairman does not support eliminating this floor provision entirely, however. In several States, the detrimental effects of eliminating it outweigh the benefits of doing so.

Fifteen States have both a low per-pupil expenditure and a State contribution which exceeds 50 percent of education revenues. The contribution rate calculated by subtracting the high State share from the low total per-pupil expenditure in those States--without figuring a floor of one-half of per-pupil expenditures below which the rate cannot fall--can yield a contribution rate as much as $325 lower than current rates.[13] Incorporating the floor (but eliminating the national average per-pupil expenditure provision) yields a contribution rate which falls slightly below current LCRs in 13 States (by an average of about $106) and exceeds current LCRs in two States (by $55 in Florida and $2.50 in Louisiana).[14]

11/ Report, supra note 1, at ____.

12/ Id.

13/ One of the 15 States is Hawaii. The difference between Hawaii's LCR in 1979 and a contribution rate figured without a floor is $436, because Hawaii has a State contribution of nearly 80 percent. This figure is exceptional.

14/ Given errors and imperfections in data, the $2.50 figure is probably not significant.

The following table summarizes this.

Comparison of Contribution Rates for States with Per-Pupil Expenditures Below National Average and State Contributions Over Half of Education Revenues, 1977 Data

State	Rate Under Commission Formula	1979 LCR	Rate Under Alternative Formula, Without Floor	Rate Under Alternative Formula, With Floor
Alabama	$927.5	$780.0	$455.5	$641.5
Arkansas	1,131.0	780.0	576.5	600.5
Florida	837.6	780.0	753.6	835.5
Georgia	1,112.0	780.0	603.1	623.0
Kentucky	804.2	780.0	427.2	689.0
Louisiana	858.3	780.0	668.3	782.5
Mississippi	1,102.0	780.0	581.2	617.0
N. Carolina	823.6	780.0	475.6	708.5
S. Carolina	1,026.0	780.0	641.2	685.0
W. Virginia	839.5	780.0	580.5	748.0
Indiana	1,030.0	780.0	682.6	703.5
N. Mexico	777.8	780.0	474.8	726.0
Oklahoma	943.9	780.0	660.9	736.0
Texas	1,057.0	780.0	686.5	692.0
Hawaii	600.5	780.0	344.2	600.5

In the Chairman's view, a significant drawback of eliminating the floor is its regionalized effect. All but two of the 15 States most heavily affected by eliminating the floor are in the South or the Southwest.

Five States have State contributions amounting to over 50 percent of education revenues, but average per-pupil expenditures exceeding the national average. Districts in those States--which are able to spend more for each child than districts spend on the average in the Nation as a whole--do not, in the Chairman's view, need to be guaranteed a floor below which FCR cannot fall.

In addition, calculating without the floor for those five States yields a contribution rate which does not differ markedly from current LCRs in those States, except in the case of Alaska.[15] A rate figured with the floor would, in contrast, exceed current rates by much more--an average of $326.[16] The following table summarizes this.

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[15] Alaska is an exception to the general rule both because the State contribution is high and because Federal land ownership is so extensive there.

[16] This figure excludes Alaska. Including Alaska in the computation, a rate figured with the floor would exceed current rates by an average of $434.

Comparison of Contribution Rates for States with Per-Pupil Expenditures Above the National Average and State Contributions Exceeding Half of Education Revenues, 1977 Data

State	Rate Under Commission Formula	1979 LCR	Rate Under Alternative Formula, Without Floor	Rate Under Alternative Formula, With Floor
Delaware	$1,036	$914	$608	$1,036
Minnesota	964	868	860	964
Montana	949	1,049	924	949
Washington	940	797	767	940
Alaska	1,679	1,974	1,112	1,676

The Chairman considers that eliminating the floor in States with average per-pupil expenditures falling below the national average is far more burdensome than is justified by the minimum "overpayment" resulting if the floor is retained. In contrast, retaining the floor for districts in States with average per-pupil expenditures in excess of the national average results in considerably more "overpayment." At the same time, eliminating the floor for those districts results in a contribution rate differing little from current LCRs.

Thus, the Chairman suggests a provision which allows districts in States with an average per-pupil expenditure below the national average but with State contributions in excess of half of education revenues to be guaranteed an FCR which does not fall below one-half of per-pupil expenditures in the State. The Chairman does not support a similar provision for districts in States with an average per-pupil expenditure above the national average, though the State contribution exceeds half of education revenues.

Absorption. The Chairman does not believe every burden, no matter how small, must be compensated by the Federal Government. In the Chairman's view, Impact Aid is not a debt which, like a debt between private parties, must be paid regardless of whether the creditor (here, the school district) can reasonably withstand failure of the debtor (the Federal Government) to pay.

Rather, in the Chairman's view, an Impact Aid payment is owed when the failure to pay it threatens the integrity of a school district--when a district's proper function (providing an adequate level of education) is hindered substantially (the district is unable, without making an unreasonably onerous tax effort, to finance the provision of an adequate level of education).

The Chairman considers a district's ability to withstand a Federal presence can be measured roughly by district wealth, which may be the value of taxable property available for education revenues per pupil.[17] If a federally-affected school district is wealthy, either the district is inherently wealthy and capable on its own of withstanding the Federal impact, or the Federal presence has augmented the district's tax base. This amounts to an "indirect payment." If a district is not wealthy--as is usually the case when much of the land in a district is owned by the Federal Government and is, therefore, tax-exempt--then Impact Aid payments are warranted.

Lacking an absolute standard for determining what constitutes a "substantial hindrance" in school district functions or the capability for "reasonably withstanding" the Federal Government's failure to make Impact Aid payments, the Chairman suggests using a relative standard. After comparing district wealth throughout a State, the Chairman would suggest making payments to relatively poor districts. Relatively wealthy districts would be considered able to withstand the Federal burden and to absorb the cost of educating federally-connected children.

Thus, the Chairman recommends that Impact Aid payments should be keyed to district wealth. This approach addresses the longstanding criticism that scarce Federal dollars are going to wealthy districts, and it pares the program in a fashion that the Chairman considers equitable.

Conclusion. Thus the Chairman offers three suggestions in the spirit of enhancing the success of the Commission's recommended Impact Aid Program. Those suggestions are:

(1) That districts should not be allowed to use the national average per-pupil expenditure in computing the amount of Impact Aid to which they are entitled;

(2) That districts in States with an average per-pupil expenditure which falls below the national average per-pupil expenditure should be entitled to Impact Aid payments per federally-connected child which do not fall below one-half the average per-pupil expenditure in their States; but that districts in States with an average per-pupil expenditure in excess of the national average should not be guaranteed such a floor; and

(3) That relatively wealthy districts should absorb the costs of educating federally-connected children.

Harold E. Rogers, Jr.

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[17] If a district receives revenue from non-property taxes, the assessed valuation of those tax bases should also be taken into consideration. Measures other than assessed valuation per pupil may be required from State to State, depending on State school finance plans.

DISSENTING VIEWS

of

Frank J. Macchiarola

Commissioner

Commission on the Review

of the

Federal Impact Aid Program

The work of the Federal Impact Aid Commission has taken members of the Commission across this country. In the process of our hearings many educators and concerned citizens have praised the Impact Aid Program and have made further comments about how this and other Federal programs operate and should operate. The support for this program has been virtually universal, with the major exception being the United States Education Department. Reactions have been so positive not only because of the basic thrust of the program, but also because of the way in which the program has helped provide Federal funding with a minimum amount of governmental interference.

Despite my fundamental support for the concept of Impact Aid, I am compelled to dissent from the final report of the Commission. My reasons are based upon two primary points. First, I believe that the Commission failed to treat all impacted areas of the country fairly. In determining that funding will be divided among a hierarchy of participants in the program, the Commission has acquiesced to the congressional tactic of authorizing at one level and appropriating at a lower level. While giving lipservice to districts in the B category, which labor under the same impact of lost tax revenue with increased service burden from Federal policies, the report does not guarantee fair treatment of such districts. It requires full funding of heavily impacted A districts, before giving a penny to B districts. I see no reason for appropriating less to these districts. I do not see that the difference between the kind of impacts funded warrants the Commission's determination to make such a harsh distinction in priorities. The Commission has heard from many officials and superintendents in large cities and in rural areas as well about the impact of Federal presence in the B districts. We have heard testimony of how huge amounts of property were taken off the tax rolls of the local governments. The impact of this has been enormous both in terms of loss of tax revenue, and in burdens of these often troubled youngsters upon impacted school districts. There can be no justification for the Impact Aid Commission to have placed these school districts in second class status. Beyond that, my colleagues have determined that it is more appropriate to fund other forms of impacts, even in the face of testimony which had shown that such other impact--such as the placement of military bases across this country--may lead to real long term benefits for those communities in favored sections of the country even when the bases are closed. This is the form of impact which is the most heavily rewarded by the Federal Government and that is the philosophy that has been strengthened and supported by the Commission. It is a clear case of support for old fashioned pork barrels.

If, in fact, the school districts which have been given such priority at the expense of all other districts are so vital to our national security, they should be funded under appropriations for the Defense Department, not the Education Department.

Extensive effort by the Commission staff has been expended in proving that military impact is more important than any other Federal impact. Too little effort has been expended on the poor in low-rent housing, the refugees, the Indians. These areas have not been sufficiently important to the Commission, although testimony has been heard across the country regarding the effects of Federal policies on these people.

My other reason for dissent is based upon the fact that scarce Federal resources in the area of education are being channeled to a program which is not, in truth, an education program. I believe that the Federal Government has a responsibility to provide a system of payment to localities for services rendered or for taxes lost by reason of Federal presence. However, Impact Aid is not an educational service program per se, and therefore the amount of Impact Aid funding should have no bearing on the level of appropriations for categorical educational programs. There exists a competition for dollars between Impact Aid and currently underfunded programs serving disadvantaged children in low-income rural and urban areas. This competition is inappropriate and undermines the validity of both Impact Aid and categorical aid.

Again the Commission has approached its responsibility in terms of an already existing program more with regard to the political coalitions that are involved in the maintenance of programs, and less with regard to the basic needs of schoolchildren. In making this choice, the Commission has chosen the easy way out. Federal assistance to education must be targeted to children in need, not to school districts in want. Although this approach of assisting children in need may be more difficult politically, it is more firmly grounded in reason and in equity.

As a result of these basic objections I must respectfully dissent from recommendations which I believe will have the effect of downgrading the impact of Federal presence in several important areas and which also fail to direct education dollars to meet the learning needs of disadvantaged children.

Frank J Macchiarola

Frank J. Macchiarola